

ATTACHMENT 19

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT COURT OF CALIFORNIA**

No. 5:14-cv-05344-BLF

CISCO SYSTEMS, INC.,

Plaintiff

v.

ARISTA NETWORKS, INC.,

Defendant

**Expert Report and Disclosure of Cate M. Elsten
3 June 2016**

Confidential: Attorneys' Eyes Only Information

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Table of Contents

I.	INTRODUCTION	1
II.	QUALIFICATIONS INCLUDING PUBLICATIONS AND TESTIMONY.....	2
III.	BACKGROUND	3
	A. Understanding of Legal Standards.....	3
	B. The Parties	5
	C. Relevant Products and Features	5
	D. Registered Copyrights & Copyrights-at-Issue	12
	E. Arista's Alleged Use of the Copyrights-at-Issue	14
	F. Others' Use of the Copyrights-at-Issue.....	16
IV.	OPINIONS EXPRESSED	17
	Opinion Summary	17
	A. Cisco's CLI commands, including the CLI commands at issue, are not independently transacted. These CLI commands represent a small part of the switching products in which they are employed.	17
	B. Use of the CLI commands as alleged is not sufficient to create a direct substitute for Cisco's switches, in either a technical or marketing sense. Cisco's own competitive documents make little mention of CLI commands but frequently cite a number of alternative reasons for losing business to Arista and others.....	20
	C. Cisco has encouraged and promoted the support of its CLI commands and structure as an industry standard.....	29
	D. There is no way to distinguish any loss or harm to Cisco's market that may be argued as caused by Arista's, as opposed to other competitors', support of CLI commands of the type at issue in this case.....	36
	Conclusion.....	37
V.	COMPENSATION FOR SERVICES.....	38

I. INTRODUCTION

I understand that Cisco Systems, Inc. (“Cisco” or “Plaintiff”) has alleged that certain of its U.S. copyrights (“copyrights-at-issue”) have been infringed by Arista Networks, Inc. (“Arista” or “Defendant”), as asserted in the Second Amended Complaint for Copyright and Patent Infringement in this matter (“the Complaint”).¹ These copyrights principally concern “command line interfaces” (“CLIs”), which are user interfaces implemented in software, as discussed in Section III, below. I further understand that Arista’s defenses include, among others, a claim that any use it may have made of Cisco’s asserted copyrights constitutes “fair use” under U.S. copyright law. In determining whether use of a copyright is fair use, four statutory factors are considered;² other non-statutory factors may also be considered. I have been retained by Arista to provide, among other things, my opinions regarding the fourth statutory fair-use factor, “the effect of the use upon the potential market for or value of the copyrighted work.”

Section II of this report discusses my qualifications.

Section III of this report provides background information on the copyrights-at-issue, the parties, Cisco’s allegations, and other information pertinent to my analyses.

Section IV of this report provides my opinions relating to the fourth statutory fair-use factor. My opinions at this time are based on an independent examination of documents and other discovery produced in this case, conversations with Arista personnel and independent experts,³ and certain third party sources as disclosed in my report text and Appendix A.

Section V discloses information on my compensation for services.

I understand that discovery, including expert discovery, is ongoing, and information may yet become available that will bear on my final opinions. To the extent additional relevant information comes to light, including but not limited to supplemental productions from the parties, reports from either party’s expert(s), rulings from the Court and any additional materials produced through discovery or otherwise made available, I may amend or supplement my opinions as necessary and permitted by the Court.⁴

This report has been prepared in connection with the above referenced case. The report is to be used for the specific purposes of this litigation and is not to be used for any other purpose without my express written consent and that of Ocean Tomo.

¹ Second Amended Complaint for Copyright and Patent Infringement (“Second Amended Complaint”), filed July 23, 2015.

² 17 U.S.C. § 107.

³ To date, I have spoken with consultant William Seifert, consultant John Black, and Arista Chief Financial Officer Ita Brennan.

⁴ I understand that Cisco has not yet produced financial data for its products that include the copyrights-at-issue. I respectfully reserve the right to amend or supplement my opinions in this report once such data has been produced.

II. QUALIFICATIONS INCLUDING PUBLICATIONS AND TESTIMONY

I am a Managing Director for Ocean Tomo, a firm that provides financing, asset and risk management, merger and acquisition consulting, expert services in litigation and valuation of intellectual capital. I have been a consultant on intellectual property and corporate finance matters since 1990. Prior to its acquisition by Ocean Tomo, I served as the Principal in charge of the Intellectual Property and Dispute Services Practice of Tait Advisory Services LLC. Until November 2001 I was a Partner for PricewaterhouseCoopers, L.L.P. I had previously served in various positions for one of its predecessor firms, Coopers & Lybrand, ultimately serving as National Director for Trademark and Copyright Matters. From 1990 to 1992 I was a manager for Ernst & Young.

Before 1990 I had over eleven years of industry experience in financial, marketing and accounting management positions for entertainment, retail and consumer products companies. My positions included Chief Financial Officer for Cleveland's Playhouse Square Center, Senior Corporate Sales and Marketing Analyst for Dayton Hudson Corporation's Target Stores Division (now Target Corporation), Manager of Financial and Strategic Planning for Aveda Corporation (now a division of Estée Lauder) and Chief Operating Officer for Sign Consultants, Inc.

I have experience developing strategies and participating in negotiations for the purchase, sale and licensing of ongoing businesses and tangible and intangible assets, both as a consultant and in my positions in industry. I am a Certified Licensing Professional and a Certified Management Accountant. I am also a member of the Licensing Executives Society and the International Trademark Association, for whom I served three consecutive terms on the editorial board of The Trademark Reporter. I am a past member of the Board of Governors for the Brand Name Education Foundation and a current member of the American Marketing Association. I hold a Bachelor of Arts degree from Oberlin College and a Master of Arts degree in Business from the University of Wisconsin-Madison.

My professional publications within the past ten years and a list of cases in which I have previously provided oral testimony are included in Appendix B to this report.

III. BACKGROUND

A. Understanding of Legal Standards

I understand that the U.S. Copyright Act gives authors exclusive rights over some, but not all, uses of their copyrighted works. As the Supreme Court has stated:

*The limited scope of the copyright holder's statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.*⁵

Thus, I understand that “[t]he fair use doctrine ‘permits and requires courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster.’”⁶

I further understand that fair use is an affirmative defense against copyright infringement, meaning that if the use of copyrighted materials qualifies as fair use there is no infringement.⁷ In determining whether the use made of a copyrighted work is a fair use, factors to be considered include:

- 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- 2) the nature of the copyrighted work;
- 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- 4) the effect of the use upon the potential market for or value of the copyrighted work.⁸

These four statutory factors must be considered “to determine whether the public interest in the free flow of information outweighs the copyright holder’s interest in exclusive control over the work.”⁹ I understand that these four factors are not exhaustive, however, and that courts may consider other factors as well.¹⁰ I further understand that these factors are to be viewed “as guidelines for ‘balancing the equities,’ not as ‘definitive or determinative’ tests.”¹¹

⁵ *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156, 95 S. Ct. 2040, 2044, 45 L. Ed. 2d 84 (1975).

⁶ *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1175 (9th Cir. 2013) (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994)).

⁷ 17 U.S.C. § 107 (no infringement if use is fair); *Fox Broad. Co. v. Dish Network L.L.C.*, 723 F.3d 1067, 1074 (9th Cir. 2013) (fair use is affirmative defense).

⁸ 17 U.S.C. § 107.

⁹ *Lamb v. Starks*, 949 F. Supp. 753, 757 (N.D. Cal. 1996) (quoting *Hustler Magazine, Inc. v. Moral Majority, Inc.*, 796 F.2d 1148, 1151 (9th Cir. 1986)).

¹⁰ <http://www.copyright.gov/fair-use/more-info.html>.

¹¹ *Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 1399 (9th Cir. 1997) (citation omitted).

My analysis in this report considers the fourth statutory factor, which focuses on the impact of the alleged infringement on the copyright owner's (here, Cisco's) ability to exploit its original work. I understand that such an analysis must consider two general questions:

- Whether the defendant's use has significantly harmed the copyright owner's market for the original work. This is a fact-specific inquiry that determines what harm has already occurred.¹²
- Whether "unrestricted and widespread" use by others would adversely affect the potential market for the original work.¹³ This requires an assessment to determine what type of impact widespread use would have on the original work's market.¹⁴

In considering whether and to what extent harm has occurred or may occur, I understand that courts will often consider whether the defendant's use amounts to mere duplication of the entirety of an original such that it clearly supersedes the object of the original and serves as a market replacement for it.¹⁵ I further understand that the commercial nature of the use is an element to be considered under this factor, but is not necessarily decisive.¹⁶ I also understand that "the importance of this [fourth] factor will vary, not only with the amount of harm, but also with the relative strength of the showing on the other factors."¹⁷ Some courts have held that, where a defendant's work is comprised of substantially more than the allegedly infringing material, "the relevant market effect is that which stems from defendant's use of plaintiff's 'expression,' not that which stems from defendant's work as a whole."¹⁸ Additionally, I understand that if the defendant's use is found to be 'transformative,' market substitution is less certain, and market harm cannot be inferred.¹⁹

Finally, I understand that the issues affecting this fourth factor may overlap, in some respects, with Cisco's allegations of market impact in support of its alleged copyright damages and Arista's responses to those allegations. To my knowledge, Cisco has not yet presented any analysis or other disclosure of such an alleged impact. I am addressing these issues here proactively, and respectfully reserve the right to respond to any such analysis or evidence if and as presented by or on behalf of Cisco. Insofar as the issues overlap, my responses to Cisco's allegations of market impact (assuming Cisco makes such allegations) may also be relevant to the fourth fair use factor.

¹² *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 567, 568 (1985).

¹³ *Id.*

¹⁴ *Princeton Univ. Press v. Mich. Document Servs., Inc.*, 99 F.3d 1381, 1387-1388 (6th Cir. 1996); *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 451 (1984); <http://www.dmlp.org/legal-guide/fair-use>.

¹⁵ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

¹⁶ *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (1992);

Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

¹⁷ *Campbell*, 510 U.S. at 590-91, n.21.

¹⁸ *Arica Inst., Inc. v. Palmer*, 970 F.2d 1067, 1078 (2d Cir. 1992) (emphasis added); see also *Wright v. Warner Books, Inc.*, 953 F.2d 731, 739 (2d Cir. 1991) (holding that the "effect on the market must be attributable to the [alleged infringement].")

¹⁹ *Campbell*, 510 U.S. at 589-91.

B. The Parties

1. Cisco

Cisco Systems, Inc. (“Cisco”) was incorporated on December 10, 1984 and is headquartered in San Jose, CA.²⁰ The company designs, manufactures, and sells Internet protocol-based networking and other products related to the communications and information technology industry. Cisco groups its products and technologies into various categories, including Switching, Next-Generation Network (NGN) Routing, Collaboration, Service Provider Video, Data Center, Wireless, Security, and other products. These products, primarily integrated by Cisco’s Internetwork Operating System (“IOS”) software, link geographically dispersed local-area networks (LANs), metropolitan-area networks (MANs) and wide-area networks (WANs).²¹

2. Arista

Arista Networks, Inc. (“Arista”) was founded in November 2004 and is headquartered in Santa Clara, CA. The company delivers software-driven cloud networking solutions for large data center and computing environments.²² Its products include network switches that it uses to build scalable data centers for approximately 3,500 customers worldwide.²³ Arista’s Extensible Operating System (“EOS”) network operating system runs on all its products.²⁴

C. Relevant Products and Features

1. Networking Equipment

a. Routers

Routers are devices that connect networks, thereby linking computers to the Internet. The router directs data packets from one router to another through the network until it reaches its destination.²⁵ The router directs data packet traffic by choosing the best path for information to travel so that it is received quickly.

Cisco is the world’s leading producer of network routers. Its competitors include Juniper and 3Com, among others.²⁶ Arista does not produce routers.

²⁰ www.reuters.com/finance/stocks/companyProfile?symbol=CSCO.O.

²¹ *Id.*

²² https://www.arista.com/assets/data/pdf/Corporate_Background.pdf.

²³ *Id.*

See also <https://www.arista.com/en/products/switches>

²⁴ https://www.arista.com/assets/data/pdf/Corporate_Background.pdf

²⁵ https://www.cisco.com/cisco/web/solutions/small_business/resource_center/articles/connect_employees_and_offices/what_is_a_network_switch/index.html.

²⁶ Frost & Sullivan, World Enterprise Router Markets, 2006, p. 1-12.

b. Network Switches

Network Switches serve as controllers that enable networked devices to communicate with each other efficiently, sharing information and allocating resources. Many businesses use network switches to connect computers, printers and servers within a building or office campus.²⁷ Managed network switches are configurable and provide more flexibility and capacity since they allow for management locally or remotely. In comparison, unmanaged network switches do not have to be configured and there is less effort needed for installing or setting up the switch. However, unmanaged switches do not have as much network capacity. Managed switches tend to be used for business networks while unmanaged switches tend to be used for home networking equipment.²⁸

Cisco is the world's leading producer of managed network switches. Its competitors for switches include HP, Huawei, Juniper, Dell, Arista and others. Data from Crehan Research and IDC Research for 2015 shows the following revenue market shares for the total worldwide Ethernet switches and for high-speed Ethernet data center switches (excluding Blade).^{29,30}

Figure 1
2015 Worldwide Vendor Market Share³¹

Vendor	Total Ethernet Switches	High-Speed Ethernet Data Center Switches
Cisco	60.7%	64.6%
HP	9.0%	6.7%
Huawei	4.5%	N/A
Juniper	3.7%	4.3%
Arista	3.1%	10.0%
Dell	N/A	1.9%
All Other	19.0%	12.5%

²⁷ https://www.cisco.com/cisco/web/solutions/small_business/resource_center/articles/connect_employees_and_offices/what_is_a_network_switch/index.html.

²⁸ *Id.*

²⁹ I understand the Cisco copyrighted operating systems are included in a range of products that compete in more markets than the market in which Arista and Cisco compete. Arista's use of the copyrights at issue does not and would not cause harm to the market for the copyrighted works where Arista does not compete.

³⁰ ARISTANDCA00266297;

<http://www.idc.com/getdoc.jsp?containerId=prUS41061316>.

³¹ Dell's share is included under "All Other" for Total Ethernet Switches, but broken out for High-Speed Ethernet Data Center Switches.

Switches are feature-rich products that are differentiated in the marketplace based on a variety of customer needs. An Arista white paper notes that “[p]erformance, resiliency and programmability” are the fundamental business requirements for next generation cloud and enterprise data center networks and describes components and network services that Arista’s EOS operating system (defined in the next report section) offers. The white paper highlights the following as among the important differentiators of the EOS architecture:³²

- **Resiliency** – the multi-process state-sharing architecture results in higher availability, reduced maintenance windows, improved manageability, and tighter security.
- **Programmability and Extensibility** – EOS offers a rich set of programmable interfaces that allow the EOS to be programmable across all layers. This enables rapid integration with a wide range of third-party applications.
- **Network Services** – A comprehensive suite of networking services to address network virtualization, application and visibility, telemetry, SDN controller integration, and automation. One such network services is a smart system upgrade that delivers software updates to the network in a non-disruptive way.

Response	Percentage
Yes, the current government is responsible	33%
No, the current government is not responsible	67%

As discussed below, Cisco and Arista also receive requests for proposal (or similar documents) from customers that specify a number of features that the customer requires or desires in a network switch.

³² CSI-CLI-00022947.

33

c. Other Networking Equipment

There are many different types of networking equipment beyond switches and routers. For example, Cisco sells server, security, hyper-converged infrastructure, and video products.³⁴ I understand a number of Cisco's other products, sold independent of its switches, use CLIs. For example, Cisco's firewall security product, ASA 5500, uses an operating system that is not the same as Cisco IOS but nonetheless utilizes a CLI with "similar syntax and other conventions to the Cisco IOS CLI."³⁵

2. Network Operating Systems

A network operating system is a type of software that allows networks to be managed and monitored. These operating systems can be embedded in networking devices such as routers and switches, and allow for a variety of networking functions, such as file and print sharing among multiple computers, account administration for users, data backup, security, and sharing of data among users.³⁶ Different companies offer different network operating systems. A sample of these are listed below:

- Internetwork Operating System ("IOS"), used in Cisco routers and switches³⁷
- HP ProVision and ComWare, used in HP networking products³⁸
- Junos, used in Juniper Networks routers and switches³⁹
- Versatile Routing Platform ("VRP"), used in Huawei routers and switches⁴⁰
- Extensive Operating System ("EOS"), used in Arista switches⁴¹
- Fabric OS ("FOS"), used in Brocade Communications switches⁴²

³⁴ <http://www.cisco.com/c/en/us/products/index.html>.

³⁵ http://www.cisco.com/c/en/us/td/docs/security/asa/asa82/command/reference/cmd_ref/cli.html. Also see Cisco's ASA 100V product, available at

http://www.cisco.com/c/en/us/td/docs/security/asa/asa87/configuration/guide/asa_87_cli_config/ref_cli.html. *Also see* http://www.cisco.com/c/en/us/products/collateral/application-networking-services/application-networking-manager/data_sheet_c78_572610.html;

https://web.archive.org/web/20140508140050/http://www.cisco.com/c/en/us/td/docs/app_ntwk_services/data_center_app_services/application_networking_manager/4_x/release/note/relnote4_x.html.

³⁶ <http://www.comptechdoc.org/independent/networking/guide/netnos.html>.

³⁷ http://www.cisco.com/c/en/us/td/docs/optical/cpt/r9_5/configuration/guide/cpt95_configuration/cpt93_configuration_chapter_010.pdf, p. 5.

³⁸ http://h17007.www1.hp.com/docs/interoperability/Cisco/HP-Networking-and-Cisco-CLI-Reference-Guide_June_10_WW_Eng_ltr.pdf.

³⁹ <http://www.juniper.net/us/en/products-services/nos/>.

⁴⁰ http://huawei.com/ilink/en/solutions/broader-smarter/morematerial-b/HW_133061;
<http://www1.huawei.com/en/products/data-communication/ethernet-switches/index.htm>.

⁴¹ https://www.arista.com/assets/data/pdf/Corporate_Backgrounder.pdf.

⁴² <https://www.brocade.com/content/dam/common/documents/content-types/product-matrix/brocade-compatibility-matrix-fos-7x-mx.pdf>.

A multitude of discrete services and features are provided by network operating systems.

[REDACTED]

[REDACTED]

Subsequently, a breakdown of these primary components illustrates that there is significantly more detail within each of these infrastructure components.⁴⁴

[REDACTED]

.

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

[REDACTED]

46 [REDACTED]

[REDACTED]

a. Command Line Interfaces (“CLIs”)

Command Line Interfaces, or CLIs, are used by human operators, and sometimes by computer programs, to interface with network devices. For networking equipment, a CLI is an interface that uses a set of commands and underlying code to communicate with, configure and manage network operating systems.⁴⁷ These commands are a way of interacting with a computer’s operating system, program or application, in which the user responds to a visual prompt by typing in a command on a specified line, receives a response back from the system, and then enters another command, etc.⁴⁸ I understand that, for some customers, CLIs may be used most frequently to configure switches upon installation, and less frequently after the initial configuration is complete.⁴⁹ In other cases, even during the configuration phase, other methods may be used such as a Graphical User Interface (“GUI”).⁵⁰

CLIs were the primary way of interacting with most computer systems into the 1980s. Beginning in the 1980s and continuing to the present, CLIs have not been widely used by consumer computer users due to the emergence of easier-to-use GUIs.⁵¹ However, CLIs are still used with business computers and networking systems, most often by programmers and system operators. I understand that the degree to which CLIs are used with network switches varies depending on the type of customer and the individual customer’s preferences.⁵² According to Arista, these types of customers include, but are not limited to, web customers, high performance computing customers, and enterprise customers, each with varying levels of preference for CLIs.⁵³

A CLI is comprised of *syntax* (the grammar that a command must follow) and *semantics* (the operations that are possible and the definition of the syntax).⁵⁴ Within network operating systems, vendors define a set of rules that provide for executable commands used in configuring, maintaining, and monitoring equipment and network operations.⁵⁵

b. Cisco CLI Command Modes and Hierarchy

According to Cisco, the specific commands available to a user of its IOS are dependent on which of three “command modes” the user is working in.⁵⁶ There are also “submodes” that provide subsets of the commands available in a specific mode.

⁴⁷ Second Amended Complaint, p. 2.

⁴⁸ <http://searchwindowsserver.techtarget.com/definition/command-line-interface-CLI>

⁴⁹ Conversation with John Black. I understand this is similar for routers, with respect to which one analyst has stated that “[t]he CLI is usually only needed when the router is first installed, or if a major change is required, so regular maintenance can usually be performed by lower level technicians using the GUI interface.” Frost & Sullivan, World Enterprise Router Markets, 2006, p. 1-13.

⁵⁰ CSI-CLI-01841322 at 339.

⁵¹ <http://blogs.technet.com/b/mscom/archive/2007/03/12/the-gui-versus-the-command-line-which-is-better-part-1.aspx>.

⁵² Conversation with William Seifert.

⁵³ 30(b)(6) Deposition of Anshul Sadana, May 27, 2016, pp. 202-203, 218-220 (Rough).

⁵⁴ http://www.cisco.com/c/en/us/td/docs/ios/12_2/configfun/command/reference/ffun_r/frf001.html.

⁵⁵ http://www.cisco.com/c/en/us/td/docs/ios/12_2/configfun/configuration/guide/ffun_c/fcf001.html#wp1000918; <http://www.revolv.com/main/index.php?s=Command-line%20interface>.

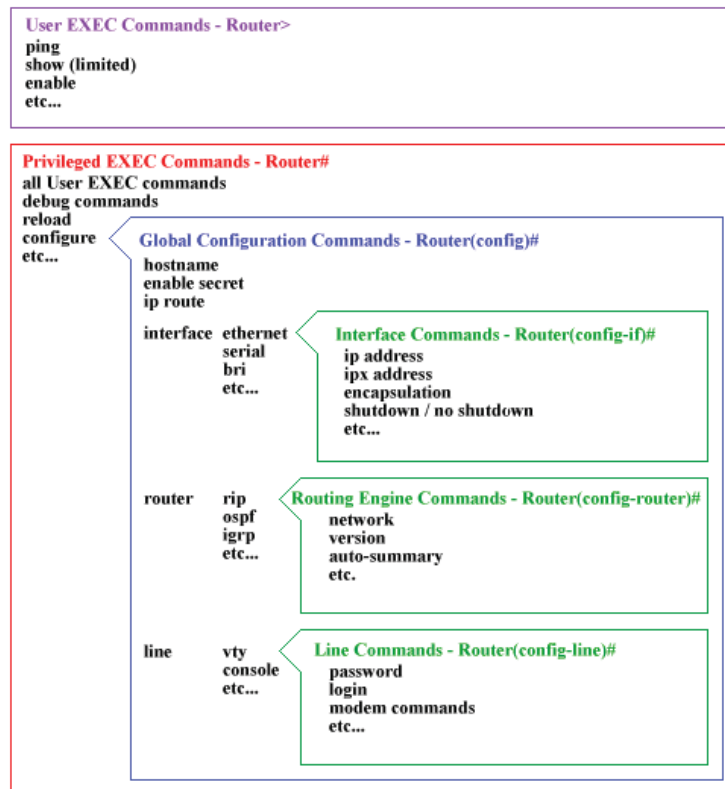
⁵⁶ http://www.cisco.com/c/en/us/td/docs/ios/12_2/configfun/configuration/guide/ffun_c/fcf001.html.

- i. **User EXEC mode** – This mode is active during the start of a router session and mostly includes “show” or “more” commands in which one can view the current configuration status and “clear” commands, which clear interfaces. User EXEC mode commands are a subset of total commands.
- ii. **Privileged EXEC mode** – In order to access all commands, a user must enter Privileged EXEC mode, which typically requires a password.
- iii. **Global configuration mode** – This mode is accessed from the privileged EXEC mode and allows the user to enter commands that configure general system characteristics and make changes to a running configuration.
- iv. **Specific/Interface configuration mode** – This is a submode that is accessed from the global configuration mode and allows a user to enter a variety of protocol-specific or feature-specific configuration modes.
- v. **Subinterface configuration mode** – This is a submode accessed from a specific configuration mode and used for the configuration of specific features within the scope of a given specific configuration mode.
- vi. **ROM Monitor mode** – This is a separate mode used when the router cannot boot properly; it can only be accessed by interrupting the boot sequence during startup.

The figure below illustrates an example of Cisco’s CLI command hierarchy:⁵⁷

⁵⁷ http://www.cisco.com/E-Learning/bulk/public/tac/cim/cib/using_cisco_ios_software/02_cisco_ios_hierarchy.htm.

Figure 3
Cisco IOS Command Hierarchy



I understand from Mr. Black that the code used to implement CLIs (i.e. to parse and interpret the received commands) represents a small portion of a network operating system, as discussed further in this report in Section IV.A.2.b below.

D. Registered Copyrights & Copyrights-at-Issue

Cisco alleges that Arista has copied portions of works covered by a total of 26 registered and pending copyrights.⁵⁸ Cisco claims that these copyrights cover the IOS, IOS XR, IOS XE (hereinafter, collectively, “IOS”) and NX-OS software used with Cisco routing and switching products.⁵⁹ The registered copyrights purport to cover “new and revised computer code” and (in many cases) “associated documentation,” with registration dates ranging from June 2002 to November 2014. They exclude from the material in which copyright is being claimed “[p]rior works by claimant [or in some cases “previously published material”] and preexisting third party computer code.”⁶⁰ A summary of the 16 asserted registered copyrights is as follows:

⁵⁸ Second Amended Complaint.

⁵⁹ *Id.*, p. 2.

⁶⁰ *Id.*, Exs. 3-28.

Figure 4
Summary of Asserted Copyrights⁶¹

Cisco Product	Registration Number	Registration Date	Second Amended Complaint Source Exhibit
Cisco IOS 11.0	TXu 1-036-057	6/14/2002	Exhibit 3
Cisco IOS 11.1	TXu 1-048-569	6/14/2002	Exhibit 4A
Cisco IOS 11.2	TXu 1-036-063	6/14/2002	Exhibit 5
Cisco IOS 11.3	TXu 1-057-804	6/14/2002	Exhibit 6A
Cisco IOS 12.0	TXu 1-057-805	6/14/2002	Exhibit 7A
Cisco IOS 12.1	TXu 1-057-807	6/14/2002	Exhibit 8A
Cisco IOS 12.2	TXu 1-057-806	6/14/2002	Exhibit 9A
Cisco IOS 12.3	TXu 1-188-975	7/26/2004	Exhibit 10
Cisco IOS XR v3.0	TXu 1-237-896	4/29/2005	Exhibit 16
Cisco IOS 12.4	TXu 1-259-162	8/12/2005	Exhibit 11
Cisco IOS XR v3.2	TXu 1-270-592	10/19/2005	Exhibit 17
Cisco IOS XR v3.3	TXu 1-336-997	7/19/2006	Exhibit 18
Cisco IOS XR v3.4	TXu 1-344-750	3/2/2007	Exhibit 19
Cisco IOS XR v3.5	TXu 1-592-305	7/17/2007	Exhibit 20
Cisco NX-OS Release 4.0	TX 7-940-713	11/13/2014	Exhibit 25
Cisco NX-OS Release 5.0	TX 7-940-718	11/13/2014	Exhibit 26
Cisco NX-OS Release 5.2	TX 7-940-727	11/13/2014	Exhibit 27
Cisco NX-OS Release 6.2	TX 7-940-722	11/13/2014	Exhibit 28
Cisco IOS XR v4.3	TX 7-933-364	11/14/2014	Exhibit 21
Cisco IOS XR v5.2	TX 7-933-353	11/14/2014	Exhibit 22
Cisco IOS 15.2	TX 7-937-159	11/24/2014	Exhibit 14
Cisco IOS XE v2.1	TX 7-937-240	11/24/2014	Exhibit 23
Cisco IOS XE v3.5	TX 7-937-234	11/24/2014	Exhibit 24
Cisco IOS 15.4	TX 7-938-341	11/26/2014	Exhibit 15
Cisco IOS 15.0	TX 7-938-524	11/28/2014	Exhibit 12
Cisco IOS 15.1	TX 7-938-525	11/28/2014	Exhibit 13

I understand Cisco asserts that, collectively, these copyrights (registered and application pending) cover the entirety of Cisco's IOS and NX-OS operating systems, as well as certain associated documentation, apart from unclaimed prior works and preexisting third party computer code. I further understand that Cisco is not alleging that Arista has copied the totality of Cisco's IOS or NX-OS operating systems, or anything close to it. Rather, Cisco is asserting that Arista has copied approximately 514 of Cisco's CLI commands (or command fragments); certain of Cisco's command

⁶¹ *Id.*, Exs. 3-28.

hierarchies, command modes, and command prompts; certain command responses; and certain portions of Cisco's documentation (collectively, copyrights-at-issue).⁶²

E. Arista's Alleged Use of the Copyrights-at-Issue

1. Arista Products

Cisco alleges that portions of the copyrights-at-issue are incorporated into Arista's network switches and portions of Arista's documentation.⁶³ Cisco and Arista switches both compete for certain customers and types of business functions; however, the products and services offered by the two companies vary in a number of material respects. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED].⁶⁵ The Arista EOS architecture separates the processes associated with EOS from the system database ("SysDB"), and runs on top of the Linux core or kernel. The EOS Architecture includes additional components such as Hardware Abstraction Layer and a suite of Network Services. The figure below includes a breakdown of the Arista EOS Architecture into its features and services components:⁶⁶

⁶² For ease of discussion throughout this report, I will simply use the term "CLI commands" to reference the command words, command hierarchies, command modes and command prompts associated with a CLI.

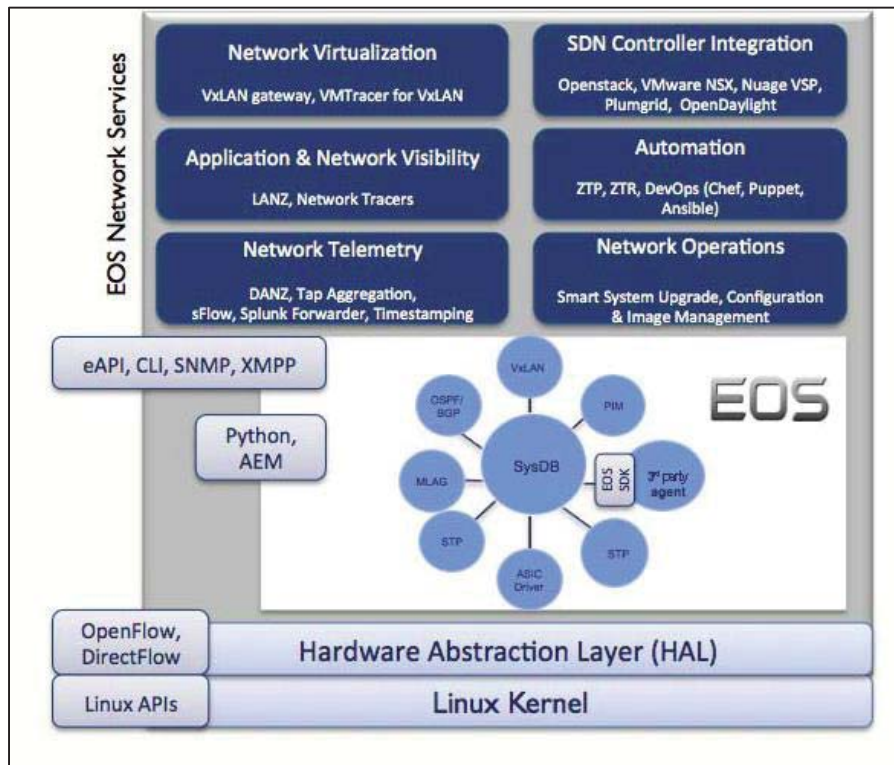
⁶³ Second Amended Complaint, p. 2.

⁶⁴ [REDACTED]

⁶⁵ <http://www.arista.com/en/products/eos>;
<http://www.arista.com/assets/data/pdf/EOSWhitepaper.pdf>.

⁶⁶ <http://www.arista.com/assets/data/pdf/EOSWhitepaper.pdf>.
<http://www.arista.com/en/products>.

Figure 5
Arista EOS Architecture



2. Alleged Infringement

According to Cisco, the “key components” Arista is alleged to infringe relate to “at least 500 multi-word commands” from Cisco’s IOS and NX-OS CLIs.⁶⁷ As noted earlier, I understand that the allegedly infringing elements cover these CLI “multi-word commands”; certain CLI command hierarchies, command structures, command modes, and command prompts; certain command responses; and certain portions of Arista’s documentation. I understand that Cisco does not allege that Arista copied any of its IOS or NX-OS software source code, including the source code underlying the CLI—only Cisco’s publicly available materials.⁶⁸

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Thus, the

⁶⁷ Second Amended Complaint, p. 13.

⁶⁸ *Id.*, pp. 7-9.

Defendant Arista Network Inc.’s Responses to Plaintiff Cisco Systems, Inc.’s Fourth Set of Interrogatories (Nos 17-21), p. 20.

[REDACTED]
[REDACTED]
[REDACTED]

allegedly copied commands and command fragments also represent approximately 5% or less of the total Arista CLI commands.

F. Others' Use of the Copyrights-at-Issue

I understand that many Ethernet switch vendors besides Arista use CLIs that substantially overlap with Cisco's IOS CLI. For example, I understand that Nortel has publicly stated that it uses a "Cisco-like" CLI, and that vendors including HP, Dell, IBM, Brocade, Alcatel Lucent, and others have stated in their public product literature that they use an "industry standard" CLI, which includes many terms in common with Cisco's IOS CLI.⁷¹ Numerous third-party sources, including for example *Network World* magazine, have also observed that many switch vendors copy portions and/or aspects of Cisco's CLI.⁷²

I further understand that a Cisco officer has publicly stated, with specific reference to the CLI, that vendors including HP, Brocade, Alcatel Lucent, and Extreme "have innovated on their own, rather than copy, to create value and interoperability for their customers."⁷³ Thus, Cisco apparently contends that the amount of overlap between these vendors' CLIs and Cisco's does not create significant value for customers relative to other switch features.

⁷¹ The term "industry standard" is often used in the same sense as "Cisco-like," including by Cisco itself, as discussed further in report Section IV.C.1.b and Section IV.C.2 below.

⁷² <http://www.networkworld.com/article/2349126/cisco-subnet/appealing-to-ccies--hardware-vendors-copy-cisco-s-cli-and-netflow-to-get-into-cisco-acc.html>.

⁷³ ANI-ITC-944_945-3451247 (<http://blogs.cisco.com/news/protecting-innovation>).

IV. OPINIONS EXPRESSED

Opinion Summary

I have evaluated currently available evidence in this matter and concluded that it fails to support a contention that Arista's alleged infringement has harmed the potential market for or value of the copyrighted work as owned and employed by Cisco. Therefore, it is my opinion that the fourth factor weighs in favor of a finding of fair use. I have made the following observations and reached the following conclusions in forming my opinion:

A. Cisco's CLI commands, including the CLI commands at issue, are not independently transacted. These CLI commands represent a small part of the switching products in which they are employed.

1) Neither the CLI commands at issue nor the operating systems of which they are a part are independently transacted.

I have seen no evidence to suggest Cisco has offered the CLI commands at issue or CLIs in general for sale or license. [REDACTED]

[REDACTED].⁷⁴ To the best of my knowledge at this time, these network operating systems are only employed on products such as routers, switches, and others products. Therefore, in this sense there is strictly speaking no independent "market" for the copyrights-at-issue in which harm may have occurred.^{75,76} The only product market that may be examined in this case is the market for equipment employing the network operating system of which the CLI commands at issue are a part.

2) The CLI commands at issue represent only a small part of the switching products in which they are (or are allegedly) employed.

a. Switches of the type at issue in this case embody a large number of functional features, of which the CLI commands are only one.

Cisco's and Arista's switches comprise hardware and software, each offering a multitude of distinguishable features. For example, the current data sheet for Cisco's Nexus 9300-EX Platform Switches provides information on the following hardware features:⁷⁷

⁷⁴ [REDACTED]

⁷⁵ Recognizing the term "market" may be defined differently for other purposes.

⁷⁶ I note in this context that at least one court has stated, "[I]t is sensible that a particular unauthorized use should be considered 'more fair' when there is no ready market or means to pay for the use, while such an unauthorized use should be considered 'less fair' when there is a ready market or means to pay for the use. The vice of circular reasoning arises only if the availability of payment is conclusive against fair use." *Princeton Univ. Press v. Mich. Document Servs., Inc.*, 99 F.3d 1381, 1387-1388 (6th Cir. 1996).

⁷⁷ <http://www.cisco.com/c/en/us/products/collateral/switches/nexus-93108tc-ex-switch/datasheet-c78-736651.html>.

Figure 6
Cisco Nexus 9300-EX Platform Hardware Features

Ports	Management ports	Frequency
Downlink supported speeds	USB ports	Airflow
CPU	RS-232 serial ports	Physical dimensions
System memory	Power supplies	Acoustics
SSD drive	Typical & maximum power	
System buffer	Input voltage	

On its website Cisco indicates that its Nexus 9000 Series switches “include **vast** switch-level and fabric-level software-defined networking and programmability **features**.”⁷⁸ Cisco’s IOS services and features include several core system services and application attributes, which in turn each contain their own group of system services. According to a Cisco White Paper on IOS/ENA, these services and features include the following:⁷⁹

Figure 7
Cisco IOS/ENA Services and Features

Routing & Switching Technology	Infrastructure	Application Attributes
Management Services	Network Services	Performance
Traffic Management	Packet Services	Scalability
Network Management	Interface Management	High Availability
Forwarding Services	NetIO	Security
Routing	Component Services	
Switching	Component Management	
Voice	SysDB	
	Control Point	
	OS Services	
	Microkernel Services	
	Library Services	
	File Services	

I understand there are many sub-services and features that underlie these general categories. As discussed further in report Section IV.B below, available evidence indicates that CLIs are sometimes (but not always) identified among dozens of discrete features discussed in customer RFPs⁸⁰ for switches of the type at issue.

b. CLI commands are only one portion of Cisco’s IOS.

I understand from discussions with Mr. Black and from certain Cisco documents that the CLI commands are only one component of Cisco’s IOS. As illustrated in Figure 7 above, the Cisco IOS core features and services include Management, Forwarding, Network,

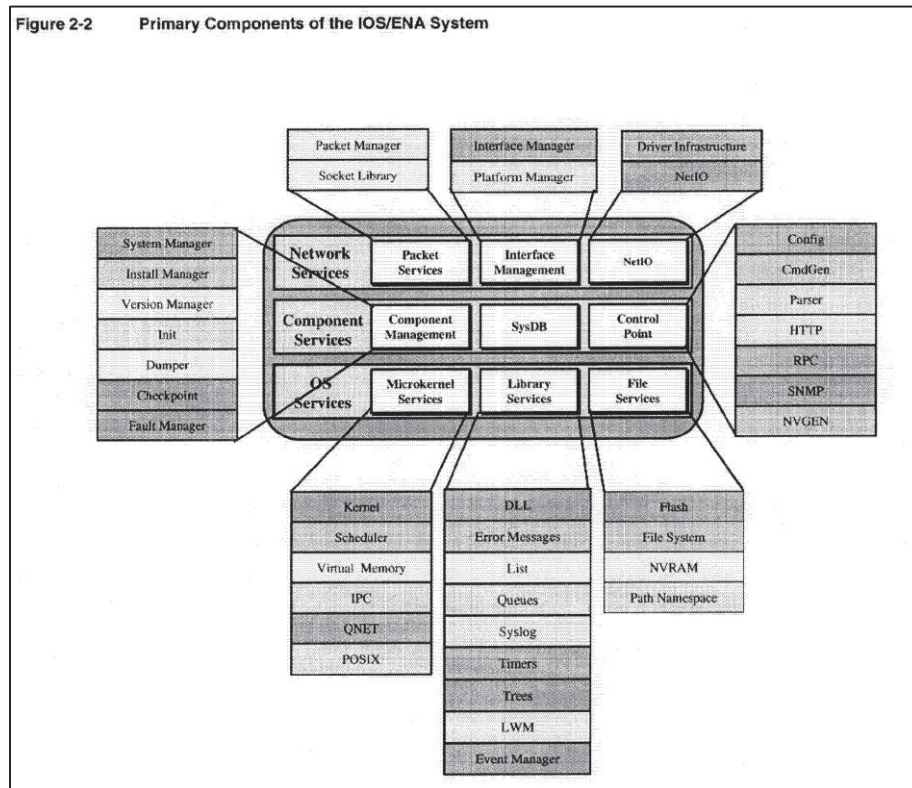
⁷⁸ <http://www.cisco.com/c/en/us/products/switches/index.html> (emphasis added in bold).

⁷⁹ CSI-CLI-01841322 at 333.

⁸⁰ “Request for Proposal”; sometimes, “RFQ” (“Request for Quote”) or “RFI” (“Request for Information”).

Component, and OS services as well as application attributes of Performance, Scalability, High Availability, and Security.⁸¹ Within each of these core features and services are groups of primary components that cover more specific features. According to a Cisco White Paper, the CLI is one of multiple sub-components that interact with other components of the operating system.⁸²

Figure 8
Primary Components of the IOS/ENA System⁸³



- c. **The allegedly infringed CLI commands are a small portion of the total CLI commands in Cisco's and Arista's software.**

I understand that approximately 514 CLI commands currently appear to be at issue in this case. I further understand from Mr. Black that Arista's EOS contains approximately 13,000 to 14,000 CLI commands.⁸⁴ Therefore, the CLI commands at issue represent less than 5% of

⁸¹ CSI-CLI-01841322 at 333-334.

⁸² *Id.*

⁸³ *Id.* at 335.

⁸⁴ Conversation with John Black. Consistent with this, Arista corporate representative Adam Sweeney testified that the current version of Arista's EOS operating system has between ten thousand and twenty thousand CLI commands. See 30(b)(6) Deposition of Adam Sweeney, May 13, 2016, p. 140 (Rough).

the CLI commands used for Arista's switches. As stated earlier, the CLI commands at issue similarly represent less than 5% of those used for Cisco's switches.

d. The source code related to the allegedly infringed CLI commands is not at issue.

As stated in Section III of this report, I understand the copyrights-at-issue do not relate to the implementation of the CLI, which is executed by underlying source code not in dispute in this matter. Thus, I understand that there is no allegation that Arista copied any of Cisco's source code. Rather, with respect to CLI commands used with Arista's EOS software, I understand that Cisco alleges that EOS recognizes approximately 514 of the same CLI commands or command fragments that Cisco's software recognizes.

B. Use of the CLI commands as alleged is not sufficient to create a direct substitute for Cisco's switches, in either a technical or marketing sense. Cisco's own competitive documents make little mention of CLI commands but frequently cite a number of alternative reasons for losing business to Arista and others.

As stated in Section III of this report, I understand that in considering whether and to what extent the potential market for or value of the copyrighted work has been or may be harmed, courts will often consider whether the defendant's use amounts to mere duplication of the entirety of the original such that it clearly supersedes the object of the original and serves as a market replacement for it.⁸⁵ In this case it is evident that the alleged infringement of the copyrights-at-issue is not and would not be sufficient to duplicate or create a market replacement for the Cisco switches employing the CLIs.

1. Use of the CLIs at issue as alleged is not sufficient to "supersede the object of the original" in technical terms. Despite the alleged infringement, Cisco's IOS and Arista's EOS cannot operate interchangeably, whether because of the CLIs or otherwise.

I understand that one measure of market harm is the substitutability of the copyrighted product and the alleged infringing product. In this case, the CLI commands have no value without the associated software code which causes the networking equipment to perform a vast number of tasks based on the relevant instructions. This code associated with either the Arista CLI or the EOS software as a whole, has thus far not been at issue in this matter. I understand from discussion with Mr. Black that the two companies' operating systems cannot be substituted for one another: an Arista EOS will not work on a Cisco switch, nor will a Cisco IOS work on an Arista switch.

2. Customers for Cisco and Arista switches base decisions on features other than the CLI commands at issue – either entirely, or almost entirely in that "Cisco-like" or "Industry Standard" CLIs are one feature among many preferred or required of a switching product.

a. Customers typically consider a great many features in deciding which switch to purchase.

One indicator of the features, attributes and functionalities that customers seek is the information found in a customer's RFP. Customers send that information to vendors such as Arista or Cisco to outline their needs. This permits vendors to bid competitively. RFPs may

⁸⁵ *Campbell*, 510 U.S. 569.

be informative regarding what drives customer demand to the extent that they identify the features and functionalities that customers seek and, in some cases, how these are prioritized. As part of my analysis, I reviewed a variety of initial RFPs that Arista or Cisco received from potential customers.⁸⁶ These RFPs identify dozens of features, apart from the CLI, that customers requested in Ethernet switches.

In addition to RFPs, other Cisco documents acknowledge that Arista's products are differentiated by a host of non-CLI related features. These documents indicate that Arista's products included critical or desirable features or services that Cisco failed to deliver. [REDACTED]

[REDACTED]
[REDACTED].⁸⁷

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]⁸⁸

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Industry participants and analysts acknowledge that Arista's products may offer significant feature advantages in competition with Cisco products; among these feature advantages, "industry standard" or "Cisco-like" CLI is rarely included. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Further, Cisco's own documents seldom refer to the company's CLI as a competitive factor. [REDACTED]

⁸⁶ See, e.g. ARISTANDCA12905565, p. 3 and [REDACTED]

⁸⁷ [REDACTED]

⁸⁸ [REDACTED].

[REDACTED]⁸⁹

- b. **Customer preferences and priorities regarding CLIs vary. Some types of customers are not focused on CLIs (in some cases not at all), while for other customers CLIs are a “check box” item but not a differentiator between competitors.**

[REDACTED]⁹⁰

[REDACTED]⁹¹

While it is clear that customers vary considerably in the value they attribute to a particular CLI structure, I have seen no evidence to date that any sale was driven solely or primarily by the use of specific CLI commands.

- c. **Cisco’s own documents show it has lost business to Arista and others for reasons wholly unrelated to CLIs.**

I have now reviewed a quantity of Cisco documents analyzing why it lost or risked losing business in competitive situations with Arista and others. CLIs generally are seldom mentioned and, when mentioned, are one of many Arista product advantages and are assigned no particular priority by Cisco. I have yet to see any note taken of the specific CLI commands at issue, other than in legal documents related to the case.

[REDACTED]⁹²

⁸⁹ [REDACTED]

⁹⁰ [REDACTED]

⁹¹ [REDACTED]

⁹² [REDACTED]

Many Cisco documents indicate business lost or at risk due to a number of functional and service performance factors entirely unrelated to CLIs. [REDACTED]

[REDACTED]⁹³ Chief among the factors that customers are noted as valuing are latency, programmability, high density, features and responsiveness, reliability, and customer support, but many others are mentioned.

i. Latency

⁹⁴ I understand from Cisco documents and other sources that the financial services industry is one in which latency performance is of utmost importance. As many financial services firms have moved into algorithmic, proprietary or high frequency trading, low latency has become a top priority due to the fact that traders need to be able to react to market data as quickly as possible or risk losing considerable potential profit.⁹⁵

96

97

98

100

101

93

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⁹⁵ <http://nextgendistribution.com.au/solution-centre/arista-finds-niche-high-frequency-trading/>

96

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98

99

¹⁰⁰ *Id.* Testimony from the key Bank of America decision-maker, Jeffrey Birnbaum, confirmed this fact, and further confirmed that the CLI played almost no role in the decision. *See* Deposition of Jeffrey Birnbaum, May 17, 2016, p. 44.

101

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]¹⁰² [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]¹⁰³ [REDACTED]

ii. Programmability

Another key differentiating factor of Arista's product offering has been the fact that it is highly programmable at all layers, including the Linux kernel, hardware forwarding tables, switch configuration and CLI, switch control plan and management layer.¹⁰⁴ The programmability offered by Arista's products has been a major selling point to customers as the networking industry has moved toward software-defined networking ("SDN"). The open nature of these products allows for the "rapid integration of a wide range of third-party applications for virtualization, management, automation, orchestration and network services."¹⁰⁵ It is clear that customers valued the open nature of Arista's product offerings – a fact that Cisco readily acknowledged – and in some cases selected Arista as a vendor on this basis.

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]¹⁰⁶ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]¹⁰⁷ [REDACTED]
 [REDACTED]
 [REDACTED]¹⁰⁸ [REDACTED]

iii. High density

Another selling point of Arista's products has been the high port density of many Arista switches. Port density refers to the number of ports available on a single switch, and is of

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ <https://www.arista.com/en/products/eos/open-and-programmable>; note that this distinguishes the programmability of the CLI from its own nature or features. See [REDACTED]

¹⁰⁵ <https://www.arista.com/en/products/eos/open-and-programmable>.

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED]

¹⁰⁸ [REDACTED]

considerable importance to many customers – including large enterprise clients – due to the fact that high density switches make the best use of the limited physical space and power constraints.¹⁰⁹

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹¹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹²

iv. Innovative features and responsiveness to customer requests

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁰⁹ <https://waveiceku.wordpress.com/tag/port-density/>.

¹¹⁰ [REDACTED]

¹¹¹ [REDACTED].

¹¹² [REDACTED]

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116 [REDACTED]
117 [REDACTED]
118 [REDACTED]
119 [REDACTED]
120 [REDACTED]
121 [REDACTED]
122 [REDACTED]
123 [REDACTED]

1124

v. Product reliability

125

126

127

128

129

130

131

vi. Customer support

132

Year	Number of Publications
124	65
125	85
126	65
127	70
128	95
129	100
130	95
131	75
132	100

[REDACTED]
[REDACTED] 133 [REDACTED]
[REDACTED]
[REDACTED] 134 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 135 [REDACTED]
[REDACTED]
[REDACTED] 136 [REDACTED]

vii. CLI features

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 137 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 138 [REDACTED]
[REDACTED]
[REDACTED] 139 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 140 [REDACTED]
[REDACTED]
[REDACTED] 141 [REDACTED]

It therefore appears that even when the focus is narrowed to CLIs, Arista has offered advantages over Cisco.

133 [REDACTED]
134 [REDACTED]
135 [REDACTED]
136 [REDACTED]
137 [REDACTED]
138 [REDACTED]
139 [REDACTED]
140 [REDACTED]
141 [REDACTED]

C. Cisco has encouraged and promoted the support of its CLI commands and structure as an industry standard.

1. Support of “Cisco-like CLIs” is widespread in the relevant market and is not confined to Arista.

a. The terms “Cisco-like CLIs” and “industry standard CLIs” may be used interchangeably. They are not precise terms of art, but imply some degree of substantial overlap with Cisco CLI commands.

Certain documents, including, for example, RFPs, use the terms “industry standard CLIs” or “Cisco-like CLIs.”¹⁴² Based on my review of the documents and discussion with Mr. Seifert, these terms indicate that CLI commands and structures will have a “look and feel” similar to that used by Cisco and most others in the industry, generally with some substantial number of overlapping commands.¹⁴³ For example, I understand that—even looking only at the approximately 514 commands and command fragments allegedly copied by Arista, and ignoring the thousands of other Cisco CLI commands, where there may also be overlap with other vendors:¹⁴⁴

- Adtran: At least 178 commands overlap
- Alcatel and Alcatel-Lucent: At least 138 commands overlap
- Brocade: At least 242 commands overlap
- D-Link: At least 305 commands overlap
- Dell: At least 268 commands overlap
- Edge-Core: At least 223 commands overlap
- Extreme and Enterasys: At least 111 commands overlap
- Foundry: At least 163 commands overlap
- HP: At least 128 commands overlap
- IBM (now Lenovo): At least 106 commands overlap
- Juniper (JUNOS-based routers): At least 218 commands overlap
- Netgear: At least 169 commands overlap
- Oracle/Sun Microsystems: At least 120 commands overlap
- Procket Networks: At least 103 commands overlap

These figures likely underestimate (and may *substantially* underestimate) the overlap between other vendors’ CLIs and Cisco’s, because they count only the overlap that is a subset of the approximately 514 commands and command fragments allegedly copied by Arista, which comprises only a small part of Cisco’s whole CLI. It is also important to note that where a command is not present in another vendor’s CLI, that vendor may not support the feature or features corresponding to that command—in other words, the vendor may use no command for that feature because it does not offer the feature, as opposed to using a different command.

¹⁴² ARISTANDCA13657419; ARISTANDCA13662855.

¹⁴³ Conversation with William Seifert.

¹⁴⁴ Expert Report of William Seifert, June 3, 2016.

b. Support of “Cisco-like CLIs” is widespread in the relevant market and is not confined to Arista. Many manufacturers describe their products as having “industry standard CLIs” or specifically promote similarities to Cisco’s CLIs.

Arista acknowledges that it supports certain CLI commands that are also supported by Cisco. For example, an Arista presentation refers to the EOS CLI feature as the “Industry Standard CLI” that is considered a “Common CLI tool.”¹⁴⁵ It is worth noting that numerous other industry participants also promote their support of “industry standard” CLIs that overlap with Cisco’s.

Since the 1990s, Cisco has known it supports CLI commands also support by other industry participants. As these companies entered the market in the 1990s and into the 2000s, they highlighted to customers that engineers could use commands of the type they had been trained to use previously on Cisco products.

I understand that at least the following industry participants support and promote CLI commands that are the same as or similar to Cisco’s.

- Dell has referred to an “industry-standard CLI” among the features listed on the specification sheet for its Ethernet switches. Dell highlights that its “Dell Networking OS 9” software features a “fully compliant, industry-standard CLI [that] allows certified engineers to be productive from day one and helps you protect training investments.”¹⁴⁶ Gavin Cato, Vice President of Development and Engineering at Dell, testified that Dell is aware of the CLI command overlap with any vendor “that uses that same industry standard” and that the company generally markets to its customers that it supports “an industry-standard CLI.” Mr. Cato also listed Arista, Juniper, Extreme Networks, and Enterasys as examples of vendors that “use the industry-standard CLI [commands].”¹⁴⁷
- In making a presentation on the viability of its software management solutions, HP emphasized its products’ “ease of migration and leveraging existing knowledge,” including incorporation of industry-standard commands. HP has created a guidebook to match and highlight the overlap between the Cisco and HP ProVision CLI commands, as illustrated in the figure below:¹⁴⁸

¹⁴⁵ CSI-CLI-01692937 at 974.

¹⁴⁶ <http://www.dell.com/learn/us/en/04/campaigns/dell-networking-os9>.

¹⁴⁷ 30(b)(6) Deposition of Gavin Cato, May 20, 2016, p. 64.

¹⁴⁸ <http://cadinc.com/wp-content/uploads/2015/08/CLI-Ref-Guide-v3-2015-CAD.pdf> [removed Comware].

Figure 9
HP Guidebook to Cisco CLI

Comparing Frequently Used Commands			
The table below lists frequently used commands for each operating system.			
	ProVision		Cisco
U	enable	U	enable
U	configure	U	configure terminal
U/P	show flash	U/P	show flash
U/P	show version	U/P	show version
P	show run	P	show run
P	show config	P	show start
U/P	show history	U/P	show history
U/P	show logging	U/P	show logging
U/P	show ip route	U/P	show ip route
U/P	show ip	U/P	show ip interface brief
U/P	show interface brief	U/P	show interfaces status
P	erase start	P	erase start
P	show config <filename>	P	more flash:/<filename>
P	reload	P	reload
P	write memory	P	write memory
P	show tech	U/P	show tech-support
U/P/C	show	U/P	show
U/P/C	no	P	no
C	end	C	end
U/P/C	exit	U/P/C	exit
P/C	erase	P	erase
P/C	copy	P	copy
C	hostname	C	hostname
C	logging	C	logging
C	router rip	C	router rip
C	router ospf	C	router ospf
C	ip route	C	ip route
C	access-list	C	access-list
C	redistribute	C	redistribute

HP markets its HP MSR50 LAN/WAN router product as having an “[i]ndustry-standard CLI with a hierarchical structure” that “reduces training time and expenses, and increases productivity in multivendor installations”¹⁴⁹

- Pluribus, in promoting its MicroBlade product, claimed that “[k]ey to the MicroBlade is the Pluribus Networks Netvisor, providing a rich set of L2/L3 networking services based on an industry-standard CLI.”¹⁵⁰
- Enterasys highlights its products’ “[p]owerful management and configuration tools – including industrystandard [sic] Command Line Interface.”¹⁵¹

¹⁴⁹ <http://h17007.www1.hp.com/docs/products/4AA3-0767ENW.pdf>.

¹⁵⁰ <http://pluribus.staging.unomena.net/supermicro/>.

¹⁵¹ <http://web.archive.org/web/20101007005735/http://enterasys.com/company/literature/xsr-1800-ds.pdf>.

- Brocade promotes its ICX 6610 Switch product as featuring an “industry-standard CLI”¹⁵²
- Avaya, for its Ethernet Routing Switch 8800/8600 product, indicates that customers can configure the product using an “industry-standard command line interface”¹⁵³
- Netgear markets its M4200 switch series as featuring an “[i]ndustry standard command line interface (CLI) for IT admins used to other vendors commands.”¹⁵⁴

Preliminary analysis indicated that of the “500 multi-word commands” that Cisco alleges Arista has “unlawfully copied,” over 200 commands are supported by one or more of the following vendors: Adtran, Alcatel-Lucent, Allied Telesis, Brocade, D-Link, Dell, Foundry, HP, Juniper, Netgear, Procket Networks, Extreme Networks, IBM, F5 Networks, and others.¹⁵⁵ I understand this analysis is ongoing.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁵⁶ I note that this 10-20% far exceed the percent of total Arista CLI commands that are at issue in this case.

c. Cisco distributes its CLI commands for use by non-Cisco CLI vendor industry participants

On June 17, 2014 Cisco announced it was acquiring Tail-f Systems (“Tail-f”), a software supplier that provides multi-vendor orchestration software for traditional and virtualized networks.¹⁵⁷ Cisco continues to sell Tail-f’s two network management products, Network Control System (“NCS”, rebranded as “NSO”) and ConfD, which allow network operators to utilize various CLI-styles on different networking devices, among other capabilities.¹⁵⁸

The NCS/NSO software allows companies to easily implement network solutions across a variety of networking devices and multiple vendors using a variety of CLI styles (including Cisco-style and Juniper-style).^{159,160} According to Cisco Technical Leader, Cons T Åhs, “NSO uses standardized interfaces on the devices it manages” and is “essentially a large service written on top of ConfD”, Tail-f’s other product offering.¹⁶¹

¹⁵² <http://www.brocade.com/content/dam/common/documents/content-types/faqs/brocade-icx-6610-faq.pdf>.

¹⁵³ <https://downloads.avaya.com/css/P8/documents/100128482>.

¹⁵⁴ <http://www.downloads.netgear.com/files/GDC/datasheet/en/M4200.pdf>.

¹⁵⁵ Expert Report of John Black, June 3, 2016. Also see Defendant Arista Networks, Inc.’s Fifth Supplemental Responses to Plaintiff Cisco System Inc.’s First Set of Interrogatories (Nos. 9, 10, & 13), pp. 145-156.

¹⁵⁶ CSI-CLI-02446710 at 725.

¹⁵⁷ <http://www.networkcomputing.com/networking/cisco-buy-orchestration-software-startup-tail-f/505521188>.

¹⁵⁸ http://www.cse.chalmers.se/edu/year/2015/course/TDA383_LP3/assets/gl/Cons_2016-02-15.pdf, p. 4.

¹⁵⁹ <http://www.cisco.com/c/en/us/about/corporate-strategy-office/acquisitions/tail-f.html#~faqs>.

¹⁶⁰ Deposition of Carl Moberg, May 18, 2016, p. 147-148.

¹⁶¹ http://www.cse.chalmers.se/edu/year/2015/course/TDA383_LP3/assets/gl/Cons_2016-02-15.pdf, p. 11.

The ConfD product appears to be a slimmed down version of NCS/NSO that customers use with switches from Cisco's competitors (network device manufacturers).¹⁶² [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Cisco currently offers a premium version of ConfD that supports three types of command line interfaces: Cisco IOS-XR style, Cisco IOS style and Juniper style.¹⁶⁵

Cisco's offer and sale of a product that allows its competitors' customers to use Cisco or "Cisco-like" CLIs to configure and communicate with non-Cisco switches appears to be perpetuating widespread use of its CLI commands on non-Cisco switches, which utilize non-IOS operating systems. The logical conclusion is that Cisco either recognizes that the use of its CLI commands on non-Cisco switches does not harm the market for its copyrighted work, or it is itself abetting that harm.

¹⁶² http://www.cse.chalmers.se/edu/year/2015/course/TDA383_LP3/assets/gl/Cons_2016-02-15.pdf.

¹⁶³ [REDACTED]

¹⁶⁴ [REDACTED]

¹⁶⁵ <http://www.tail-f.com/management-agent/> and <http://www.tail-f.com/confd-training-videos/>.

2. Cisco has promoted the support of its CLI commands and CLI structure as a *de facto* industry standard.

There are many benefits to standardization in the networking industry.¹⁶⁶ Standardization can:

- Allow equipment made by different companies to work together
- Provide a base level of known quality for some aspects of operation
- Provide an indication of performance expectation
- Accelerate and reduce the cost of innovation

Cisco states the benefits of standardization include higher bandwidth and open connectivity¹⁶⁷ and credits standardization for the success of the Industrial Ethernet, as it allows different manufacturers to consolidate their network architecture by using a variety of equipment vendors and allows companies to take advantage of economies of scale while still providing flexibility.¹⁶⁸

Cisco further detailed the benefits of standards to network operators and connected users, claiming standards:¹⁶⁹

- Simplify and shorten the pilot phase of networking
- Enable ready and accurate installations and upgrades
- Streamline ongoing maintenance and administration
- Speed diagnostics and reduce repair times
- Bolster the reliability of connections and exchanges
- Help ensure integrity of connections and connected resources
- Extend network reach and ease network use
- Heighten technical and business flexibility
- Lower capital and operating expenses
- Promote vendor independence and product availability

Cisco itself has long described its CLIs and CLI structure not as “proprietary” but as “industry standard.” A Cisco product datasheet referencing use of the Cisco IOS Software dated March 7, 2006 stated:¹⁷⁰

*“Customer can use the **industry-standard** Cisco IOS Software command-line interface (CLI) or user-friendly graphical user interface (GUI) to configure and administer Cisco Unified CallManager Express.”*

¹⁶⁶ http://www.teach-ict.com/as_a2_ict_new/ocr/A2_G063/333_networks_coms/standards/miniweb/pg5.htm.

¹⁶⁷ Industrial Ethernet: A Control Engineer’s Guide, White Paper, published by Cisco Systems, p. 7

(http://www.cisco.com/c/dam/en/us/products/collateral/switches/catalyst-2950-series-switches/prod_white_paper0900aecd8013313e.pdf).

¹⁶⁸ *Id.*, p. 13.

¹⁶⁹ Cisco and Standards, Opening the Door to Borderless Networks, White Paper, published by Cisco Systems, 2009, p. 1 (<http://webtutorials.com/main/resource/papers/cisco/paper145/standards.pdf>).

¹⁷⁰ <http://atscsolutions.ca/pdf/UnifiedCallManagerExpress.pdf>.

Cisco also created several white papers for the Cisco IOS that discussed the “industry-standard” nature of the command-line interface. For example, Cisco white papers for the Cisco IOS XR 2.0 and 3.0 releases both promoted the CLI as industry standard to its customers:¹⁷¹

*“Cisco IOS XR Software manageability provides **industry-standard management interfaces, including modular command-line interface**, Simple Network Management Protocol (SNMP), and native Extensible Markup Language (XML) interfaces.”*

Industry analysts have also noted that the Cisco IOS is considered a *de facto* industry standard used by numerous vendors:¹⁷²

*“Cisco IOS is the most popular CLI look and feel for talking to networking devices. Its enormous success has made it the de facto standard in the networking industry. **Many vendors simply cloned it** to avoid training new operational methods during the product introduction cycle.”*

Arista CEO Jayshree Ullal is former Senior Vice President of Data Center Switching and Services of Cisco. She has testified in deposition that both during her tenure at Cisco and after her departure, Cisco regarded its CLIs as an industry standard for which it encouraged broad adoption and widespread use.¹⁷³ Likewise, Andreas Bechtolsheim, former Cisco General Manager of the Gigabit Switching Business Unit, testified that he recalled a meeting in which Cisco business unit heads discussed other switch vendors’ use of Cisco’s CLI, and decided to take no action.¹⁷⁴

3. Cisco is still the overwhelming market leader for the routers and switches that use the IOS operating system and the CLIs that operate therein. Cisco does not appear to have been harmed by widespread support of its CLI commands and, in fact, may benefit from their support as “industry standards.”

As shown in Figure 1, Cisco is still the overwhelming market share leader for Ethernet switches of all types, despite the widespread use of the same or similar CLI commands by competitors. Cisco’s market share for High-Speed Ethernet Data Center Switches, the product market sub-segment in which it competes most closely with Arista, is over six times higher than that of its closest competitor, Arista. Cisco’s market share for total Ethernet Switches is similarly over six times higher than the closest competitor, HP. There is currently no evidence of any correlation between market share and the extent to which a company’s CLI commands overlap with Cisco’s. For example, while I understand Mr. Black’s current analysis shows Dell has well over 1,000 overlapping commands with Cisco,¹⁷⁵ Dell’s market share for High-Speed Ethernet Data Center Switches is the lowest of the major switch competitors.

¹⁷¹ http://www.cisco.com/c/en/us/products/collateral/ios-nx-os-software/ios-xr-software/product_data_sheet09186a008022d5f4.pdf; see also, e.g., ARISTANDCA00009488; ARISTANDCA00009527; ARISTANDCA00010591; ARISTANDCA00010675; http://www.cisco.com/web/DE/pdfs/solutions/crs1_ios_xr2.pdf.

¹⁷² The Complete IS-IS Routing Protocol, Hannes Gredler, Walter Goralski, p. 42; emphasis added in bold.

¹⁷³ Deposition of Jayshree Ullal, February 25, 2016, pp. 222-223.

¹⁷⁴ Deposition of Andreas Bechtolsheim, May 25, 2016, pp. 56-57.

¹⁷⁵ Expert Report of John Black, June 3, 2016.

In fact, the value of the CLI commands to Cisco is likely enhanced by their adoption as “industry standard.” Such adoption effectively “locks in” the Cisco model, discouraging competitors from developing new and potentially superior methods of effecting the same results. Even when Cisco loses sales to competitors based on performance, price and other factors, engineers continue to become familiar with Cisco’s command style. In addition, Cisco continues to maintain the “bragging rights” of having developed the “industry standard,” augmenting its continuing position as market leader.¹⁷⁶

D. There is no way to distinguish any loss or harm to Cisco’s market that may be argued as caused by Arista’s, as opposed to other competitors’, support of CLI commands of the type at issue in this case.

All of the above notwithstanding, if Cisco’s copyrights have suffered or are likely to suffer harm in the marketplace, there is no apparent means of separating any harm caused by Arista from harm caused by the numerous other participants who have supported “Cisco-like” CLI commands and marketed their products as employing “industry standard” or “Cisco-like” CLIs. Simply identifying sales lost by Cisco to Arista is not sufficient to support an assumption that Arista’s alleged infringement (the use of a limited number of CLI commands) was the cause of those losses, given: 1) the complexity of the products, 2) the lack of evidence that CLI commands were a driver or predominant driver of customer demand, and 3) the number of other competitors also marketing “industry standard” CLIs without objection from Cisco.

¹⁷⁶ Conversation with William Seifert.

Conclusion

Based on the totality of evidence I have reviewed to date, I have concluded there is no reasonable and reliable evidence of harm to Cisco's ability to exploit the market for the portions of its copyrights at issue in this case as they are currently understood (referenced throughout as "CLI commands" for brevity). In order to address this fourth fair use factor, I specifically looked to determine the following, among other things:

- 1) Any evidence of Arista's alleged use of the copyrights causing significant harm to Cisco's market for the original work, and
- 2) Whether "unrestricted and widespread" use by others would adversely affect the potential market for the original work.

There is no independent market for the CLI commands at issue or for the network operating software of which they are only one component. This network operating software is itself only a part of the switch products for which Cisco and Arista compete. These switches are themselves only a part of the total Ethernet switch market, which is in turn only a part of the market for switches, routers and other products in which the CLI commands are used by Cisco. Arista's alleged infringing use is therefore very minor and far removed from the majority of Cisco's sales and profits for products employing its CLIs, to the extent this may be deemed to constitute a relevant "market for the original work."

Moreover, a significant quantity of documents, including Cisco's own internal documents and publicly available information, indicate that customers choose High-Speed Ethernet Data Center switches based on a number of performance features, including but not limited to latency, programmability, port density, features and responsiveness, reliability, and customer support. These factors are unrelated to specific CLI commands. Those commands are, at most, a single feature among dozens that may be preferred (but not prioritized) by some customers. In particular, Cisco documents clearly demonstrate business lost or at risk to Arista for reasons unrelated to CLIs, and conversely fail to demonstrate a belief that Arista's CLIs are or were a reason for its sales.

Numerous companies in addition to Arista have employed "Cisco-like" or "industry standard" CLIs. Cisco itself uses the term "industry standard" to describe its own CLI and this equivalency is well recognized in the market. The terms "Cisco-like" and "industry standard" in this respect are not exact but indicate only that the operating software in question will share some number of CLI commands with Cisco's. The use of "Cisco-like" CLIs by other competitors is well known in the industry and by Cisco, which has allowed it to continue. Therefore, "unrestricted and widespread use" has already occurred and continues to occur by parties in the market. Cisco's historic and continued promotion of its CLI as the de facto industry standard has likely enhanced its position in the market, not harmed it.

Further, this widespread use notwithstanding, Cisco continues to maintain an overwhelming majority share of the market for Ethernet Switches, leading its next most successful competitors by several multiples. To this evidence of Cisco's continued ability to exploit the market for its copyright-at-issue must be added its billions of dollars in sales of routers and other products using IOS and NX-OS with which Arista does not even compete. In sum, Arista's alleged use of the CLI commands has not been, nor could it be, sufficient to create "mere duplication of the entirety of the [Cisco] original such that it clearly supersedes the object of the original and serves as a market replacement for it," either in a technical or marketing sense.

V. COMPENSATION FOR SERVICES

Fees for Ocean Tomo personnel's time and expenses have been charged at applicable market rates on this case. My billing rate for this matter is \$625 per hour. My payment is not contingent on the outcome of this case.

Respectfully,

A handwritten signature in black ink, appearing to read "Cate Elsten". The signature is fluid and cursive, with a horizontal line extending from the end.

Cate Elsten

Appendix A

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00033423	CSI-ANI-00439515	CSI-CLI-01760380	CSI-CLI-02266331	CSI-CLI-02427643	CSI-CLI-03804603	CSI-CLI-03835736	CSI-CLI-06396749
CSI-ANI-00035238	CSI-ANI-00439620	CSI-CLI-01760386	CSI-CLI-02266332	CSI-CLI-02427644	CSI-CLI-03804606	CSI-CLI-03835749	CSI-CLI-06396750
CSI-ANI-00035239	CSI-ANI-00439684	CSI-CLI-01760790	CSI-CLI-02266333	CSI-CLI-02427645	CSI-CLI-03804611	CSI-CLI-03836102	CSI-CLI-06396754
CSI-ANI-00036438	CSI-ANI-00439786	CSI-CLI-01761610	CSI-CLI-02266334	CSI-CLI-02427646	CSI-CLI-03804611	CSI-CLI-03836115	CSI-CLI-06396766
CSI-ANI-00037143	CSI-ANI-00439828	CSI-CLI-01761610	CSI-CLI-02266335	CSI-CLI-02427647	CSI-CLI-03804612	CSI-CLI-03836168	CSI-CLI-06396767
CSI-ANI-00038089	CSI-ANI-00440161	CSI-CLI-01761676	CSI-CLI-02266336	CSI-CLI-02427648	CSI-CLI-03804625	CSI-CLI-03836178	CSI-CLI-06396792
CSI-ANI-00038253	CSI-ANI-00440299	CSI-CLI-01762114	CSI-CLI-02269068	CSI-CLI-02427649	CSI-CLI-03804627	CSI-CLI-03837281	CSI-CLI-06396803
CSI-ANI-00042875	CSI-ANI-00440307	CSI-CLI-01762114	CSI-CLI-02269111	CSI-CLI-02427650	CSI-CLI-03805081	CSI-CLI-03838383	CSI-CLI-06396809
CSI-ANI-00047560	CSI-ANI-00440447	CSI-CLI-01762507	CSI-CLI-02269118	CSI-CLI-02427651	CSI-CLI-03805092	CSI-CLI-03838697	CSI-CLI-06396814
CSI-ANI-00047564	CSI-ANI-00440803	CSI-CLI-01762507	CSI-CLI-02269119	CSI-CLI-02428722	CSI-CLI-03805103	CSI-CLI-03838776	CSI-CLI-06396831
CSI-ANI-00048019	CSI-ANI-00441065	CSI-CLI-01764486	CSI-CLI-02269120	CSI-CLI-02428977	CSI-CLI-03805206	CSI-CLI-03838789	CSI-CLI-06396838
CSI-ANI-00049218	CSI-ANI-00441180	CSI-CLI-01764486	CSI-CLI-02269121	CSI-CLI-02431658	CSI-CLI-03805215	CSI-CLI-03838794	CSI-CLI-06396848
CSI-ANI-00050405	CSI-ANI-00441246	CSI-CLI-01764630	CSI-CLI-02269122	CSI-CLI-02437568	CSI-CLI-03805217	CSI-CLI-03838797	CSI-CLI-06396859
CSI-ANI-00050528	CSI-ANI-00441247	CSI-CLI-01764630	CSI-CLI-02269123	CSI-CLI-02437576	CSI-CLI-03805220	CSI-CLI-03838801	CSI-CLI-06396860
CSI-ANI-00051378	CSI-ANI-00441407	CSI-CLI-01764631	CSI-CLI-02269124	CSI-CLI-02437577	CSI-CLI-03805223	CSI-CLI-03838803	CSI-CLI-06396873
CSI-ANI-00052093	CSI-ANI-00441775	CSI-CLI-01764631	CSI-CLI-02269125	CSI-CLI-02437578	CSI-CLI-03805229	CSI-CLI-03838805	CSI-CLI-06396884
CSI-ANI-00054337	CSI-ANI-00441806	CSI-CLI-01764633	CSI-CLI-02269126	CSI-CLI-02437579	CSI-CLI-03805230	CSI-CLI-03838807	CSI-CLI-06396888
CSI-ANI-00054339	CSI-ANI-00441818	CSI-CLI-01764633	CSI-CLI-02269127	CSI-CLI-02437580	CSI-CLI-03805231	CSI-CLI-03838809	CSI-CLI-06396896
CSI-ANI-00054429	CSI-ANI-00441882	CSI-CLI-01764634	CSI-CLI-02269424	CSI-CLI-02437581	CSI-CLI-03805232	CSI-CLI-03838812	CSI-CLI-06396912
CSI-ANI-00054739	CSI-ANI-00441889	CSI-CLI-01764634	CSI-CLI-02269430	CSI-CLI-02437582	CSI-CLI-03805233	CSI-CLI-03838814	CSI-CLI-06397156
CSI-ANI-00055228	CSI-ANI-00442009	CSI-CLI-01765027	CSI-CLI-02269431	CSI-CLI-02437583	CSI-CLI-03805234	CSI-CLI-03838820	CSI-CLI-06397162
CSI-ANI-00055255	CSI-ANI-00442015	CSI-CLI-01765043	CSI-CLI-02269432	CSI-CLI-02437584	CSI-CLI-03805235	CSI-CLI-04361461	CSI-CLI-06397170
CSI-ANI-00055268	CSI-ANI-00442023	CSI-CLI-01767031	CSI-CLI-02269433	CSI-CLI-02437585	CSI-CLI-03805236	CSI-CLI-04361731	CSI-CLI-06397269
CSI-ANI-00055454	CSI-ANI-00442119	CSI-CLI-01767031	CSI-CLI-02269434	CSI-CLI-02437843	CSI-CLI-03805237	CSI-CLI-04370922	CSI-CLI-06397275
CSI-ANI-00055578	CSI-ANI-00442362	CSI-CLI-01767143	CSI-CLI-02269435	CSI-CLI-02438940	CSI-CLI-03805238	CSI-CLI-04382249	CSI-CLI-06397285
CSI-ANI-00055656	CSI-ANI-00442444	CSI-CLI-01767143	CSI-CLI-02269436	CSI-CLI-02438970	CSI-CLI-03805280	CSI-CLI-04410106	CSI-CLI-06397291
CSI-ANI-00055661	CSI-ANI-00443043	CSI-CLI-01768492	CSI-CLI-02269437	CSI-CLI-02440032	CSI-CLI-03805281	CSI-CLI-04423658	CSI-CLI-06397292
CSI-ANI-00055662	CSI-ANI-00443445	CSI-CLI-01769389	CSI-CLI-02269438	CSI-CLI-02440093	CSI-CLI-03805286	CSI-CLI-04443077	CSI-CLI-06397304
CSI-ANI-00055665	CSI-ANI-00443603	CSI-CLI-01769389	CSI-CLI-02269439	CSI-CLI-02441850	CSI-CLI-03805286	CSI-CLI-04443834	CSI-CLI-06397309
CSI-ANI-00055666	CSI-ANI-00443644	CSI-CLI-01770089	CSI-CLI-02269994	CSI-CLI-02442680	CSI-CLI-03806056	CSI-CLI-04451303	CSI-CLI-06397310
CSI-ANI-00055677	CSI-ANI-00443743	CSI-CLI-01770089	CSI-CLI-02270136	CSI-CLI-02442814	CSI-CLI-03806059	CSI-CLI-04453872	CSI-CLI-06397311
CSI-ANI-00056114	CSI-ANI-00443952	CSI-CLI-01770393	CSI-CLI-02270142	CSI-CLI-02446710	CSI-CLI-03806065	CSI-CLI-04462611	CSI-CLI-06397312
CSI-ANI-00056218	CSI-ANI-00444180	CSI-CLI-01771793	CSI-CLI-02270143	CSI-CLI-02452378	CSI-CLI-03806066	CSI-CLI-04465330	CSI-CLI-06397321
CSI-ANI-00056277	CSI-ANI-00444199	CSI-CLI-01771923	CSI-CLI-02270144	CSI-CLI-02452385	CSI-CLI-03806067	CSI-CLI-04550976	CSI-CLI-06397338
CSI-ANI-00056404	CSI-ANI-00444882	CSI-CLI-01772223	CSI-CLI-02270145	CSI-CLI-02452386	CSI-CLI-03806068	CSI-CLI-04550976	CSI-CLI-06397349
CSI-ANI-00056463	CSI-ANI-00444993	CSI-CLI-01772223	CSI-CLI-02270146	CSI-CLI-02452387	CSI-CLI-03806069	CSI-CLI-04615047	CSI-CLI-06397357
CSI-ANI-00056464	CSI-ANI-00445440	CSI-CLI-01772228	CSI-CLI-02270147	CSI-CLI-02452388	CSI-CLI-03806070	CSI-CLI-04624140	CSI-CLI-06397366
CSI-ANI-00056465	CSI-ANI-00445457	CSI-CLI-01772228	CSI-CLI-02270148	CSI-CLI-02452389	CSI-CLI-03806071	CSI-CLI-04632638	CSI-CLI-06397375
CSI-ANI-00056477	CSI-ANI-00446079	CSI-CLI-01772239	CSI-CLI-02270149	CSI-CLI-02452390	CSI-CLI-03806072	CSI-CLI-04633845	CSI-CLI-06397387
CSI-ANI-00056515	CSI-ANI-00446277	CSI-CLI-01772239	CSI-CLI-02270150	CSI-CLI-02452391	CSI-CLI-03806073	CSI-CLI-04644439	CSI-CLI-06397398
CSI-ANI-00056599	CSI-ANI-00446282	CSI-CLI-01772771	CSI-CLI-02270151	CSI-CLI-02452392	CSI-CLI-03806074	CSI-CLI-04655016	CSI-CLI-06397411
CSI-ANI-00056770	CSI-ANI-00446286	CSI-CLI-01772771	CSI-CLI-02270159	CSI-CLI-02452393	CSI-CLI-03806075	CSI-CLI-04659648	CSI-CLI-06397418
CSI-ANI-00057087	CSI-ANI-00446292	CSI-CLI-01773500	CSI-CLI-02270847	CSI-CLI-02452394	CSI-CLI-03806078	CSI-CLI-04663061	CSI-CLI-06397423
CSI-ANI-00057695	CSI-ANI-00446335	CSI-CLI-01774394	CSI-CLI-02270854	CSI-CLI-02453531	CSI-CLI-03806084	CSI-CLI-04663062	CSI-CLI-06397424
CSI-ANI-00057697	CSI-ANI-00446344	CSI-CLI-01774394	CSI-CLI-02270855	CSI-CLI-02454333	CSI-CLI-03806085	CSI-CLI-04663534	CSI-CLI-06397431
CSI-ANI-00057698	CSI-ANI-00446362	CSI-CLI-01775193	CSI-CLI-02270856	CSI-CLI-02454340	CSI-CLI-03806086	CSI-CLI-04675701	CSI-CLI-06397442
CSI-ANI-00057699	CSI-ANI-00446372	CSI-CLI-01775193	CSI-CLI-02270857	CSI-CLI-02454341	CSI-CLI-03806087	CSI-CLI-04675837	CSI-CLI-06397461
CSI-ANI-00057708	CSI-ANI-00446377	CSI-CLI-01777386	CSI-CLI-02270858	CSI-CLI-02454342	CSI-CLI-03806088	CSI-CLI-04684388	CSI-CLI-06397470

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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00058210	CSI-ANI-00446423	CSI-CLI-01777386	CSI-CLI-02270859	CSI-CLI-02454343	CSI-CLI-03806089	CSI-CLI-04691198	CSI-CLI-06397471
CSI-ANI-00058863	CSI-ANI-00446436	CSI-CLI-01778084	CSI-CLI-02270860	CSI-CLI-02454344	CSI-CLI-03806090	CSI-CLI-04711647	CSI-CLI-06397479
CSI-ANI-00060563	CSI-ANI-00446444	CSI-CLI-01778149	CSI-CLI-02270861	CSI-CLI-02454345	CSI-CLI-03806091	CSI-CLI-04714367	CSI-CLI-06397485
CSI-ANI-00061225	CSI-ANI-00446466	CSI-CLI-01780254	CSI-CLI-02270872	CSI-CLI-02454346	CSI-CLI-03806092	CSI-CLI-04717832	CSI-CLI-06397495
CSI-ANI-00061244	CSI-ANI-00446829	CSI-CLI-01781256	CSI-CLI-02270879	CSI-CLI-02454347	CSI-CLI-03806093	CSI-CLI-04721263	CSI-CLI-06397510
CSI-ANI-00061319	CSI-ANI-00446894	CSI-CLI-01781256	CSI-CLI-02270880	CSI-CLI-02458172	CSI-CLI-03806094	CSI-CLI-04721263	CSI-CLI-06397526
CSI-ANI-00061383	CSI-ANI-00447009	CSI-CLI-01781257	CSI-CLI-02270881	CSI-CLI-02458189	CSI-CLI-03806100	CSI-CLI-04752771	CSI-CLI-06397534
CSI-ANI-00061617	CSI-ANI-00447071	CSI-CLI-01781257	CSI-CLI-02270882	CSI-CLI-02458252	CSI-CLI-03806101	CSI-CLI-04761999	CSI-CLI-06397535
CSI-ANI-00061866	CSI-ANI-00448219	CSI-CLI-01781460	CSI-CLI-02270883	CSI-CLI-02459280	CSI-CLI-03806102	CSI-CLI-04808059	CSI-CLI-06397544
CSI-ANI-00064965	CSI-ANI-00448244	CSI-CLI-01781460	CSI-CLI-02270884	CSI-CLI-02459287	CSI-CLI-03806103	CSI-CLI-04810832	CSI-CLI-06397545
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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00082625	CSI-ANI-00451397	CSI-CLI-01799355	CSI-CLI-02281552	CSI-CLI-02459659	CSI-CLI-03806365	CSI-CLI-05154713	CSI-CLI-06398652
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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00086175	CSI-ANI-00458242	CSI-CLI-01809441	CSI-CLI-02297357	CSI-CLI-02478385	CSI-CLI-03806759	CSI-CLI-05948804	CSI-CLI-06399407
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Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

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Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00102362	CSI-ANI-00472001	CSI-CLI-02076900	CSI-CLI-02306222	CSI-CLI-03221960	CSI-CLI-03807751	CSI-CLI-06148136	CSI-CLI-06400421
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Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
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Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00404350	CSI-CLI-01299888	CSI-CLI-02087046	CSI-CLI-02348149	CSI-CLI-03279461	CSI-CLI-03810415	CSI-CLI-06149224	CSI-CLI-06401701
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CSI-ANI-00411918	CSI-CLI-01424275	CSI-CLI-02088856	CSI-CLI-02360467	CSI-CLI-03288669	CSI-CLI-03812099	CSI-CLI-06149876	CSI-CLI-06402271
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CSI-ANI-00411958	CSI-CLI-01428853	CSI-CLI-02089580	CSI-CLI-02361296	CSI-CLI-03288955	CSI-CLI-03812101	CSI-CLI-06268920	CSI-CLI-06402318
CSI-ANI-00411988	CSI-CLI-01431418	CSI-CLI-02091918	CSI-CLI-02362563	CSI-CLI-03289038	CSI-CLI-03812102	CSI-CLI-06309319	CSI-CLI-06402341

Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00412037	CSI-CLI-01431815	CSI-CLI-02091962	CSI-CLI-02365491	CSI-CLI-03289210	CSI-CLI-03812103	CSI-CLI-06317190	CSI-CLI-06402363
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CSI-ANI-00413916	CSI-CLI-01436466	CSI-CLI-02092179	CSI-CLI-02365501	CSI-CLI-03291491	CSI-CLI-03812307	CSI-CLI-06390822	CSI-CLI-06402532
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CSI-ANI-00413995	CSI-CLI-01443693	CSI-CLI-02092298	CSI-CLI-02365503	CSI-CLI-03292159	CSI-CLI-03812309	CSI-CLI-06393527	CSI-CLI-06402553
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CSI-ANI-00414172	CSI-CLI-01444924	CSI-CLI-02092309	CSI-CLI-02365528	CSI-CLI-03293971	CSI-CLI-03812317	CSI-CLI-06393904	CSI-CLI-06402612
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CSI-ANI-00415493	CSI-CLI-01516937	CSI-CLI-02092875	CSI-CLI-02374103	CSI-CLI-03299527	CSI-CLI-03813864	CSI-CLI-06394096	CSI-CLI-06402906
CSI-ANI-00415574	CSI-CLI-01560297	CSI-CLI-02092875	CSI-CLI-02374104	CSI-CLI-03299608	CSI-CLI-03813864	CSI-CLI-06394105	CSI-CLI-06402951
CSI-ANI-00416209	CSI-CLI-01562360	CSI-CLI-02092895	CSI-CLI-02374105	CSI-CLI-03299689	CSI-CLI-03816595	CSI-CLI-06394110	CSI-CLI-06402952
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CSI-ANI-00416239	CSI-CLI-01572876	CSI-CLI-02092906	CSI-CLI-02374107	CSI-CLI-03301156	CSI-CLI-03816603	CSI-CLI-06394129	CSI-CLI-06402954
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CSI-ANI-00416991	CSI-CLI-01575326	CSI-CLI-02093056	CSI-CLI-02374383	CSI-CLI-03302713	CSI-CLI-03816612	CSI-CLI-06394144	CSI-CLI-06403006
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CSI-ANI-00417036	CSI-CLI-01575409	CSI-CLI-02093076	CSI-CLI-02378901	CSI-CLI-03303239	CSI-CLI-03816614	CSI-CLI-06394146	CSI-CLI-06403064
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CSI-ANI-00417646	CSI-CLI-01576433	CSI-CLI-02093425	CSI-CLI-02384657	CSI-CLI-03303728	CSI-CLI-03816618	CSI-CLI-06394154	CSI-CLI-06403100
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Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00418118	CSI-CLI-01577417	CSI-CLI-02093611	CSI-CLI-02384931	CSI-CLI-03304795	CSI-CLI-03816720	CSI-CLI-06394215	CSI-CLI-06403148
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CSI-ANI-00418712	CSI-CLI-01577803	CSI-CLI-02095256	CSI-CLI-02384935	CSI-CLI-03306192	CSI-CLI-03816724	CSI-CLI-06394330	CSI-CLI-06403214
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CSI-ANI-00419089	CSI-CLI-01579186	CSI-CLI-02097966	CSI-CLI-02385819	CSI-CLI-03307965	CSI-CLI-03817062	CSI-CLI-06394341	CSI-CLI-06403352
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CSI-ANI-00422489	CSI-CLI-01610895	CSI-CLI-02103542	CSI-CLI-02393102	CSI-CLI-03321278	CSI-CLI-03823038	CSI-CLI-06394606	CSI-CLI-06403987
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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

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CSI-ANI-00422518	CSI-CLI-01613452	CSI-CLI-02103546	CSI-CLI-02394685	CSI-CLI-03322264	CSI-CLI-03823042	CSI-CLI-06394644	CSI-CLI-06404051
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CSI-ANI-00427257	CSI-CLI-01704783	CSI-CLI-02231521	CSI-CLI-02401613	CSI-CLI-03338487	CSI-CLI-03824487	CSI-CLI-06394906	CSI-CLI-06404889
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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
CSI-ANI-00427748	CSI-CLI-01710298	CSI-CLI-02232068	CSI-CLI-02401619	CSI-CLI-03340637	CSI-CLI-03824493	CSI-CLI-06394945	CSI-CLI-06404943
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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

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Confidential: Attorneys' Eyes Only Information

Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - CISCO BATES STAMPED

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CSI-ANI-00436215	CSI-CLI-01753778	CSI-CLI-02259661	CSI-CLI-02421368	CSI-CLI-03803196	CSI-CLI-03832130	CSI-CLI-06396467	CSI-CLI-06407789
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Cisco Systems, Inc. v. Arista Networks, Inc.
DOCUMENTS CONSIDERED - ARISTA BATES STAMPED

Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
ANI-ITC-944_945-0000001	ANI-ITC-944_945-3449391	ANI-ITC-944_945-3739477	ARISTANDCA10199074	ARISTANDCA11447952	ARISTANDCA12316856	ARISTANDCA12963735	ARISTANDCA13154025
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Cisco Systems, Inc. v. Arista Networks, Inc.
DOCUMENTS CONSIDERED - ARISTA BATES STAMPED

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Cisco Systems, Inc. v. Arista Networks, Inc.
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Bates	Bates	Bates	Bates	Bates	Bates	Bates	Bates
ANI-ITC-944_945-1564071	ANI-ITC-944_945-3666219	ARISTANDCA10161006	ARISTANDCA11348527	ARISTANDCA12255430	ARISTANDCA12906939	ARISTANDCA13077914	ARISTANDCA13577028
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ANI-ITC-944_945-1763443	ANI-ITC-944_945-3729709	ARISTANDCA10198666	ARISTANDCA11393199	ARISTANDCA12283580	ARISTANDCA12948473	ARISTANDCA13153606	ARISTANDCA13587988
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ANI-ITC-944_945-2766943	ANI-ITC-944_945-3730844	ARISTANDCA10198775	ARISTANDCA11405061	ARISTANDCA12292834	ARISTANDCA12951788	ARISTANDCA13153741	ARISTANDCA13589112
ANI-ITC-944_945-2767297	ANI-ITC-944_945-3730878	ARISTANDCA10198778	ARISTANDCA11405070	ARISTANDCA12292835	ARISTANDCA12951859	ARISTANDCA13153755	ARISTANDCA13589113
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ANI-ITC-944_945-2768399	ANI-ITC-944_945-3731455	ARISTANDCA10198783	ARISTANDCA11405111	ARISTANDCA12293073	ARISTANDCA12951863	ARISTANDCA13153770	ARISTANDCA13589115
ANI-ITC-944_945-2909263	ANI-ITC-944_945-3731905	ARISTANDCA10198784	ARISTANDCA11405176	ARISTANDCA12297643	ARISTANDCA12951865	ARISTANDCA13153799	ARISTANDCA13589156
ANI-ITC-944_945-2909265	ANI-ITC-944_945-3732240	ARISTANDCA10198787	ARISTANDCA11418858	ARISTANDCA12299768	ARISTANDCA12951879	ARISTANDCA13153807	ARISTANDCA13589159
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ANI-ITC-944_945-3034242	ANI-ITC-944_945-3734373	ARISTANDCA10198841	ARISTANDCA11421462	ARISTANDCA12300259	ARISTANDCA12951882	ARISTANDCA13153837	ARISTANDCA13589167

Cisco Systems, Inc. v. Arista Networks, Inc.
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ANI-ITC-944_945-3447959	ANI-ITC-944_945-3737133	ARISTANDCA10198935	ARISTANDCA11430729	ARISTANDCA12306609	ARISTANDCA12957282	ARISTANDCA13153929	ARISTANDCA13589326
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ANI-ITC-944_945-3448944	ANI-ITC-944_945-3738456	ARISTANDCA10199003	ARISTANDCA11431788	ARISTANDCA12306905	ARISTANDCA12957285	ARISTANDCA13153932	ARISTANDCA13593278
ANI-ITC-944_945-3449031	ANI-ITC-944_945-3738491	ARISTANDCA10199006	ARISTANDCA11439782	ARISTANDCA12306906	ARISTANDCA12963318	ARISTANDCA13153933	ARISTANDCA13657419
ANI-ITC-944_945-3449198	ANI-ITC-944_945-3739125	ARISTANDCA10199069	ARISTANDCA11439793	ARISTANDCA12314000	ARISTANDCA12963659	ARISTANDCA13153973	ARISTANDCA13662855
ANI-ITC-944_945-3449390	ANI-ITC-944_945-3739186	ARISTANDCA10199072	ARISTANDCA11446774	ARISTANDCA12316846	ARISTANDCA12963710	ARISTANDCA13153985	

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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - DEPOSITIONS, LEGAL FILINGS, AND LAW

Depositions	Date
30(b)(6) Deposition of Adam Sweeney	5/13/2016
30(b)(6) Deposition of Anshul Sadana and Exhibits	5/26/2016
30(b)(6) Deposition of Anshul Sadana	5/27/2016
30(b)(6) Deposition of Gavin Cato	5/20/2016
30(b)(6) Deposition of Pradeep Kathail	5/27/2016
Deposition of Andreas Bechtolsheim	5/25/2016
Deposition of Carl Moberg and Exhibits	5/18/2016
Deposition of Deepak Malik and Exhibits	5/19/2016
Deposition of Jayshree Ullal and Exhibits	2/25/2016
Deposition of Jeffrey Birnbaum	5/17/2016
30(b)(6) Deposition of Beecher Adams and Exhibits	5/10/2016
Deposition of Mark Berly and Exhibits	4/5/2016
30(b)(6) Deposition of Johan Bevenmyr	5/26/2016
30(b)(6) Deposition of John Hartingh and Exhibits	5/18/2016
Deposition of John Hartingh and Exhibits	5/18/2016
Deposition of Soni Jiandani and Exhibits	4/29/2016
Deposition of Anthony Li and Exhibits	2/1/2016
Deposition of Kirk Loughheed and Exhibits	11/20/2015
Deposition of Drew Pletcher	5/26/2016
Deposition on Anshul Sadana and Exhibits	3/17/2016
Deposition of Greg Satz and Exhibits	3/23/2016
Deposition of Terry Slattery and Exhibits	1/6/2016
Deposition of Adam Sweeney	1/29/2016
Deposition of Adam Sweeney	6/1/2016
Deposition of Balaji Venkatraman and Exhibits	5/2/2016
Legal Filings	Date
Cisco's Complaint for Copyright and Patent Infringement	12/5/2014
Cisco's First Set of ROGs to Arista (Nos. 1-13)	3/26/2015
Cisco's First Set of RFPs to Arista (Nos. 1-84)	3/26/2015
Arista's First Set of RFPs to Cisco (Nos. 1-70)	3/27/2015
Arista's First Set of ROGs to Cisco Systems (Nos. 1-15)	4/10/2015
Arista's Response to Cisco's First Set of ROGs (Nos. 1-13)	4/30/2015
Exhibit A to Cisco's Objections and Responses to Arista's First Set of Interrogatories	5/14/2015
Cisco's Second Set of RFPs to Arista (Nos. 85-102)	6/26/2015
Cisco's 2nd Set of ROGs to Arista (No. 14)	6/26/2015
Cisco's Second Amended Complaint for Copyright and Patent Infringement and Exhibits	7/23/2015
Arista's 2nd Set of ROGs to Cisco Systems (Nos. 16-17)	7/24/2015
Arista's 2nd Set of RFPs to Cisco Systems (Nos. 71-116)	7/24/2015
Arista's First Supplemental Responses to Cisco's First Set of ROGs (Nos. 1, 5, 8)	7/27/2015
Cisco's First Supplemental Response to ROG 2 - Exhibit B	8/7/2015
Cisco's First Supplemental Response to ROG 2 - Exhibit C	8/7/2015
Arista's 3rd Set of ROGs to Cisco Systems (No. 18)	8/18/2015
Arista's 3rd Set of RFPs to Cisco Systems (Nos. 117-129)	8/21/2015
Cisco's Objections & Responses to Arista's 2nd Set of ROGs (Nos. 16-17)	8/27/2015
Cisco's 2nd Supplemental Response to Arista's 1st Set of ROGs - Exhibit D	9/1/2015
Cisco's 2nd Supplemental Response to Arista's 1st Set of ROGs - Exhibit E	9/1/2015

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Cisco Systems, Inc. v. Arista Networks, Inc.

DOCUMENTS CONSIDERED - DEPOSITIONS, LEGAL FILINGS, AND LAW

Arista's 1st Supplemental Response to Cisco's 2nd Set of ROGs (No. 14)	9/18/2015
Arista's 2nd Supplemental Response to Cisco 1st Set of ROGS (Nos. 1, 5-6, 9-10, 12-13)	9/18/2015
Cisco 3rd Set of ROGs to Arista (Nos. 15-16)	9/18/2015
Cisco's Response to Arista's 3rd Set of ROGs (No. 18)	9/21/2015
Cisco's 4th Supplemental Responses to Arista's 1st Set of ROGs (Nos. 1-15)	10/14/2015
Cisco's Exhibit F to Rog Responses (No. 16)	10/14/2015
Arista's 4th Set of ROGs to Cisco (No. 19)	10/20/2015
Arista's Responses to Cisco's 3rd Set of ROGs (Nos. 15-16)	10/22/2015
Cisco's 5th Supplemental Responses to Arista 1st Set of ROGs (Nos. 1-15)	11/2/2015
Cisco Response to Rog 18 - First Supplemental Response	11/8/2015
Cisco's 6th Supplemental Objections & Responses to Arista's 1st Set of ROGs (Nos. 9-10)	11/11/2015
Cisco's 3rd Supplemental Responses to Arista's 2nd Set of Interrogatories (No. 16)	11/23/2015
Cisco's Corrected Responses to Arista's 4th Rogs (No. 19)	11/24/2015
Cisco's 7th Supplemental Responses to Arista's 1st Set of Rogs (No.2)	1/5/2016
Arista's 4th Supplemental Response to Cisco's First Set of ROGs (No. 11)	1/11/2016
Defendant Arista Networks, Inc.'s 5th Supplemental Responses to Plaintiff Cisco System Inc.'s 1st Set of Interrogatories (Nos. 9, 10, 12 & 13)	1/19/2016
Arista's 2nd Supplemental Response to Cisco's 3rd Set of Rogs	1/19/2016
Arista's 6th Supplemental Response to Cisco's 1st Set of Rogs	2/19/2016
Arista's Fifth Set of ROGS to Cisco (No. 20)	3/3/2016
Cisco's 4th Set of Interrogatories (Nos. 17-21)	3/21/2016
Arista's 8th Supplemental Response to Rog No. 9	3/28/2016
Cisco's 5th Rogs to Arista (Nos. 22-27)	3/30/2016
Arista's 6th Set of ROGS to Cisco (Nos. 21-25)	3/30/2016
Cisco's 8th Response to 2nd Rogs (No. 16)	4/3/2016
Cisco's 8th Response to 2nd Rogs (No. 16), Eighth Supplemental Exhibit F	4/3/2016
Cisco's Response to Fifth Rogs (No. 20)	4/7/2016
Arista's 9th Supplemental Response to Rog No.9	4/26/2016
Defendant Arista Network Inc.'s Responses to Plaintiff Cisco Systems, Inc.'s Fourth Set of Interrogatories (Nos 17-21)	5/9/2016
Arista's Response to Cisco's 5th Set of ROGS (22-27)	5/9/2016
Cisco's Objections and Responses to 6th Interrogatories	5/9/2016

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17 U.S.C. § 107
 Arica Inst., Inc. v. Palmer, 970 F.2d 1067, 1078 (2d Cir. 1992)
 Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994).
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 Fox Broad. Co. v. Dish Network L.L.C., 723 F.3d 1067, 1074 (9th Cir. 2013)
 Harper & Row, Publishers, Inc. v. Nation Enters., 471 U.S. 539, 567, 568 (1985)
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Cisco Systems, Inc. v. Arista Networks, Inc.

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Expert Report of John Black	6/3/2016
Expert Report of William Seifert	6/3/2016
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Cisco Systems, Inc. v. Arista Networks, Inc.

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The Complete IS-IS Routing Protocol, Hannes Gredler, Walter Goralski

Appendix B



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CATE ELSTEN CURRICULUM VITAE

June 2016

Cate Elsten is a Managing Director for Ocean Tomo, an integrated intellectual property consulting firm providing financial products and services including expert testimony, valuation, investments, risk management and transactions.

Ms. Elsten has been a consultant since 1990. She was a Principal for Tait Advisory Services and led that firm's Intellectual Property Practice prior to its acquisition by Ocean Tomo. Before joining Tait, Ms. Elsten was a Partner in PricewaterhouseCoopers' Financial Advisory Services Practice, working with intellectual property of all types and serving as National Director for Trademark and Copyright matters. Ms. Elsten worked in industry for twelve years before beginning her consulting career and held management positions for companies including Playhouse Square Center, Dayton-Hudson Corporation's Target Stores Division (now Target Corporation), Aveda Corporation (now a division of Estée Lauder) and Sign Consultants, Inc.

Ms. Elsten has provided services including expert testimony, valuation and licensing, strategic and operational consulting for companies in a wide range of industries, including biotechnology, software, medical devices and equipment, high-tech and traditional manufacturing, agriculture and food processing, pharmaceuticals, financial services, retail, hospitality, telecommunications, media and entertainment. She has testified on issues informing economic damages, marketing and industry trends, licensing and management practices, corporate and intellectual asset valuations and plans of reorganization in depositions, trials, arbitrations, bankruptcy courts and other settings. She has also served as an AAA arbitrator.

Ms. Elsten is a Certified Management Accountant and a Certified Licensing Professional. She is a member of the International Trademark Association, the Licensing Executives Society and the American Marketing Association. She served three consecutive terms on the editorial board of The Trademark Reporter and on the Board of Governors for the Brand Name Education Foundation. She has lectured on a variety of intellectual property topics for the Los Angeles and Orange County Patent Lawyers Associations, Minnesota Institute of Legal Education, Institute for International Research, International Business Forum and other professional organizations and universities.

PROFESSIONAL EXPERIENCE

Managing Director, *Ocean Tomo*
2003 to present

Principal, *Tait Advisory Services, LLC*
2001-2003

Partner (Principal), *PricewaterhouseCoopers, LLP*
Director, *Coopers & Lybrand, LLP*
1992-2001



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Senior Manager, *Ernst & Young, LLP*
1990-1992

Chief Operating Officer, *Sign Consultants, Inc.*
1989-1990

Manager of Financial and Strategic Planning, *Aveda Corporation*
1988-1989

Senior Corporate Sales and Marketing Analyst, *Dayton-Hudson Corporation,
Target Stores Division*
1984-1988

Chief Financial Officer, *Playhouse Square Center*
1981-1984

EDUCATION

University of Wisconsin-Madison, M.A. - Business. Graduated 1981. Beta Gamma Sigma.

Oberlin College, B.A. Graduated 1979. Phi Beta Kappa.

**ACTIVE
MEMBERSHIPS**

International Trademark Association
Licensing Executives Society
American Marketing Association

**PUBLICATIONS
(Past Ten Years)**

“Design in Three Dimensions: Choices and Challenges for Legal Protection”, IAM Intellectual Asset Management, Issue 66, July/August 2014, Michael Jaynes, co-author

“Bubbles and Squeaks: ‘Irrational Exuberance’ and Its Impact (or Lack Thereof) on Damages Under the Lanham Act in the Dot.Com Era,” The Trademark Reporter, Vol. 95, No. 5. Robert Morrill and Kevin Arst, co-authors



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**EXPERT
TESTIMONY**

Koninklijke Philips N.V. v. Hunt Control Systems, Inc.
Venue: U.S. District Court of New Jersey

*Bio-Rad Laboratories, Inc. & Bio-Rad QL, Inc. v. Serge Saxonov, Benjamin Hindson
& Kevin Ness*
Venue: American Arbitration Association

*Masimo Corporation and Cercacor Laboratories, Inc. v. Nova
Biomedical Corporation*
Venue: JAMS International Arbitration

Lending Tree LLC v. Zillow, Inc. et al.
Venue: Western District of North Carolina

Seed Company Ltd. and Shigeru Tamai v. William F. Westerman, et al.
Venue: Federal Court, District of Columbia

MicroUnity Systems Engineering, Inc. v. Apple, Inc., AT&T Inc., et al.
Venue: Federal Court, Eastern District of Texas

Tektronix, Inc. v. Sypris Solutions, Inc.
Venue: Arbitration, San Francisco, CA

Genentech, Inc. v. The Trustees of the University of Pennsylvania
Venue: Federal Court, Northern District of California

Quest Software, Inc. v. Centrifify Corporation
Venue: Federal Court, District of Utah, Central Division

Bauer Bros. LLC v. Nike, Inc.
Venue: Federal Court, Southern District of California

*In the Matter of Certain Electronic Devices with Multi-touch Enabled Touchpads and
Touchscreens*
Venue: ITC

Conceptus, Inc. v. Hologic, Inc.
Venue: Federal Court, Northern District of California

Attachmate Corporation v. HealthNet, Inc.
Venue: Federal Court, Western District of Washington

STMicroelectronics, Inc. v. Eliyabou Harari, SanDisk Corporation et al.
Venue: California State Court, County of Santa Clara



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Zimmer Melia and Zimmer U.S., Inc. v. Kirkland Stallings and Stallings & Assoc.

Venue: Federal Court, Middle District of Tennessee

Fields Medical Corp. et al. v. Kirkland Stallings and Stallings & Assoc.

Venue: Jefferson County, Kentucky Circuit Court

Alfred E. Mann Foundation for Scientific Research v. Cochlear Corporation

Venue: Federal Court, Central District of California

PaTalk Holdings, Inc. v. Microsoft Corporation

Venue: Federal Court, Eastern District of Texas

Crocs, Inc. v. Australia Unlimited, Inc.

Venue: Federal Court, District of Colorado

Northbrook Digital Corporation v. Browster, Inc

Venue: Federal Court, District of Minnesota

Medtronic AVE et al. v. Cordis Corporation

Venue: Federal Court, Eastern District of Texas

Boston Scientific Corporation et al. v. Johnson & Johnson and Cordis Corporation

Venue: Federal Court, Northern District of California

Avago Technologies General IP PTE Ltd. & Avago Technologies ECBU IP PTE

Ltd. v. Elan Microelectronics Corp. and Elan Information Technology Group

Venue: Federal Court, Northern District of California

Timeline, Inc. v. ProClarity Corporation

Venue: Federal Court, Western District of Washington

Hitachi, Ltd. and Hitachi Automotive Products (USA), Inc. v. BorgWarner Inc. and

Borg Warner Morse Tec Inc.

Venue: Federal Court, Delaware

Cache la Poudre Feeds, L.L.C. v. Land O'Lakes, Inc. et al.

Venue: Federal Court, District of Colorado

Peter A. Hochstein et al. v. Microsoft Corporation

Venue: Federal Court, Eastern District of Michigan, Southern Division

ICON Health & Fitness, Inc. v. The Nautilus Group, Inc. et al.

Venue: Federal Court, District of Utah

Linear Technology Corporation v. Micrel, Inc.

Venue: Federal Court, Northern District of California, San Francisco



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CIVIX-DDI, LLC v. Expedia, Inc. et al.

Venue: Federal Court, Northern District of Illinois

Applied Medical Resources Corp. v. Ethicon Endo-Surgery, Inc.

Venue: Federal Court, Central District of California

Mylan Pharmaceuticals Inc. v. The Procter & Gamble Company

Venue: Federal Court, Southern District of New York

S&M NuTec, L.L.C. v. T.F.H. Publications, Inc.

Venue: Federal Court, Western District of Missouri

Hi-Shear Technology Corporation v. United Space Alliance LLC and USBI Co.

Venue: Circuit Court, Brevard County Florida

Boston Scientific Corporation and Target Therapeutics, Inc. v. Cordis Corporation

Venue: Federal Court, Northern District of California

*Schwan's IP, LLC and Schwan's Consumer Brands North America, Inc. v. Kraft
Pizza Company*

Venue: Federal Court, Minnesota

The Nautilus Group, Inc v. Icon Health & Fitness, Inc.

Venue: Federal Court, Western District of Washington

AT&T v. Microsoft Corporation

Venue: Federal Court, Southern District of New York

Mastercard Int'l, Inc. v. First National Bank of Omaha

Venue: Federal Court, Southern District of New York

Greenlight Financial Services, Inc. v. Hartford Casualty Insurance Company

Venue: Federal Court, Central District of California

GFI America, Inc. v. Tecumseh Poultry LLC

Venue: Federal Court, Minnesota

Knot Just Beads v. Knot Just Beads, Inc.

Venue: District Court, Alabama

Imageexpo L.L.C. v. Microsoft Corporation

Venue: Federal Court, Eastern District of Virginia

On-Line Technologies, Inc. v. Perkin-Elmer Corporation et al.

Venue: Federal Court, District of Connecticut



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ATC Distribution Group, Inc. v. WTTT et al.

Venue: Federal Court, Western District of Kentucky

Gold Banc Corporation, Inc. v. Credit Union National Association, Inc.

Venue: Federal Court, District of Kansas

A&A Mechanical, Inc. v. Thomas & Betts

Venue: Federal Court, Western District of Kentucky

General Data Company Inc. v. Solvay Paperboard Company, L.L.C.

Venue: Federal Court, Southern District of Ohio, Western Division

We Media, Inc. v. Cablevision Systems Corp. et al.

Venue: Federal Court, Southern District of New York

Vicki D. Smith v. Mather Hamilton & Co., et al.

Venue: Circuit Court, Jefferson County, Kentucky

Halston LLC v. HF6, Inc. and Heller Financial, Inc.

Venue: Federal Court, Southern District of New York

Thomas Horn et al. v. Robert B. McQueen et al.

Venue: Federal Court, Western District of Kentucky

Luigino's, Inc. v. Robert Peterson and IBP, Inc.

Venue: Federal Court, District of Minnesota

Heidi Ott A.G. and Heidi Ott v. Target Corporation, et al.

Venue: Federal Court, District of Minnesota

Monsanto Company v. Pioneer Hi-Bred International, Inc.

Venue: Federal Court, Eastern District of Missouri

Simon Property Group, LP v. mySimon, Inc.

Venue: Federal Court, Southern District of Indiana

Pioneer Hi-Bred International, Inc. v. Monsanto Company

Venue: Federal Court, Eastern District of Missouri

Scott Schroering et al. v. KFS et al.

Venue: Jefferson County Circuit Court, Kentucky

Darrel Lemon v. Prince Rogers Nelson, et al.

Venue: Federal Court, Western District of Washington

Wrench LLC et al. v. Taco Bell Corporation

Venue: Federal Court, Western District of Michigan



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Ferdinand Picket v. Prince Rogers Nelson

Venue: Federal Court, Northern District of Illinois

Oreck Corporation v. Wal-Mart Stores, Inc.

Venue: Federal Court, Eastern District of Louisiana

Conco, Inc. v. General Dynamics Ordnance Systems, Inc. and Lockheed Martin Ordnance Systems, Inc.

Venue: Jefferson County Circuit Court, Kentucky

EG&G Instruments, Inc. v. Canberra Industries, Inc.

Venue: Federal Court, Eastern District of Tennessee

KCJ Corporation v. Kinetic Concepts, Inc., et al

Venue: Federal Court, District of Kansas

StairMaster Sports/Medical Products, Inc. v. Groupe Procycle, Inc. and Procycle U.S.A., Inc.

Venue: Federal Court, Western District of Washington

Spec-Mix, Inc. v. Midwest Premix, Inc. and Midwest Block & Brick, Inc.

Venue: Federal Court, Western District of Missouri

F.J. Joseph Inc. v. Lida Advertising, Inc.

Venue: Federal Court, District of Kansas

Graphic Technologies, Inc. v. Pitney Bowes, et al

Venue: Federal Court, District of Kansas

Hillerich & Bradsby v. Heavy Hitter Industries and the Major League Baseball Players Association

Venue: Federal Court, Western District of Kentucky

Perfume Pizazz, Inc. v. The May Department Stores Company

Venue: Greene County Circuit Court, Missouri

Fireplace Manufacturers, Inc. vs. Hearth Technologies, Inc.

Venue: Federal Court, District of Minnesota

In re: Worth A. Sallee et al

Venue: Federal Bankruptcy Court, Western District of Kentucky

In re: Drivers & Drivers Diversified, Inc.

Venue: Federal Bankruptcy Court, Western District of Kentucky

Ostex International, Inc. v. Boehringer-Mannheim

Venue: Arbitration, Seattle, Washington



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Straight Arrow Products, Inc. v. Miriam Collins Palm Beach Beauty Products Company

Venue: Federal Court, Eastern District of Pennsylvania

Stout Industries, Inc. v. Anheuser-Busch, Inc.,

Venue: Circuit Court of the City of St. Louis, MO

Porous Media Corporation v. Pall Corporation

Venue: Federal Court, District of Minnesota

Travelers Express Company, Inc. v. American Express Integrated Payment Systems, Inc.

Venue: Federal Court, District of Minnesota

Jurgens v. CBK, Inc.

Venue: Federal Court, Western District of Tennessee

CONTACT

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